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DOCKET NO. 2010-028 JANUARY 26, 2011

BEFORE THE BOARD OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

IN AND FOR THE STATE OF UTAH

IN THE MATTER OF THE PETITION BY THE DIVISION OF OIL,
GAS AND MINING FOR AN ORDER: (1) TO WITHDRAW NOI
M/039/013 FOR B&C LIMESTONE QUARRY; (2) TO FORFEIT
LETTER OF CREDIT NO. 015413040 FROM FAR WEST BANK, TO
DIRECT THE DIVISION TO COMPLETE RECLAMATION AND TO
AUTHORIZE A CIVIL SUIT TO RECOVER COSTS FROM BRYCE HAAS;
AND (3) TO TAKE ALL OTHER ACTIONS NECESSARY TO RECLAIM
THE LANDS AT S1/2SW1/4, S32, T18S, R1E, SLB&M, AND LOTS
3 & 4, N1/4, S5, T19S, R1E, SLB&M, SANPETE COUNTY, UTAH.

DOCKET NO. 2010-028 CAUSE NO. M/039/013

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TAKEN AT: DEPARTMENT OF NATURAL RESOURCES
 1594 West North Temple, Suite 1210
 Salt Lake City, Utah 84116

DATE: January 26, 2011

TIME: 9:19 a.m. to 11:18 a.m.

REPORTED BY: Jeff S. Eaton, RPR/CSR

ATKINSON-BAKER, INC. COURT REPORTERS
500 North Brand Boulevard, Third Floor
Glendale, California 91203
800-288-3376

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<p>1 A P P E A R A N C E S</p> <p>2 BOARD OF OIL, GAS AND MINING:</p> <p>3 Douglas E. Johnson, Chairman Ruland J. Gill, Jr.</p> <p>4 Jake Y. Harouny James T. Jensen</p> <p>5 Kelly L. Payne Samuel C. Quigley</p> <p>6 Jean Semborski</p> <p>7 DIVISION OF OIL, GAS AND MINING: 8 John R. Baza, Director Dana Dean, Associate Director, Mining 9 John Rogers, Associate Director, Oil and Gas Jim Springer, Public Information Officer Steve Schneider, Administrative Policy Coordinator Julie Ann Carter, Secretary to the Board</p> <p>11 ASSISTANT ATTORNEYS GENERAL:</p> <p>12 Steven F. Alder - Division Attorney Michael S. Johnson - Board Attorney Emily E. Lewis - Division Attorney</p> <p>14 FOR B&C LIMESTONE QUARRY:</p> <p>15 BRYCE HAAS, PRO SE</p> <p>16 ALSO PRESENT:</p> <p>17 John Blake, SITLA Lynn Kunzler, Sr. Reclamation Biologist, Minerals Paul B. Baker, Reclamation Biologist, Minerals</p>	
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<p>1 I N D E X</p> <p>2 EXAMINATION Page</p> <p>3 Paul Baker7</p> <p>4 Lynn Kunzler25</p> <p>John Blake50</p> <p>Bryce Haas81</p> <p>EXHIBITS</p> <p>Division A32</p> <p>Division C32</p> <p>Division D32</p> <p>Division B39</p> <p>Division Rebuttal A62</p> <p>P R O C E E D I N G S</p> <p>JANUARY 26, 2011 9:19 a.m.</p> <p>CHAIRMAN JOHNSON: Good morning. Welcome everybody to the January 2011 hearing of the Utah Board of Oil, Gas and Mining. We will be starting the formal part of our agenda this morning with Docket No. 2010-028, Cause No. M/039/013, in the matter of the petition by the Division of Oil, Gas and Mining for an order: No. 1, to withdraw NOI M/039/013 for B&C Limestone Quarry; No. 2, to forfeit letter of credit No. 015413040 from Far West Bank, to direct the Division to complete reclamation and to authorize a civil suit to recover costs from Bryce Haas; and, 3, to take all other actions necessary to reclaim the land at the south half of the southwest quarter, section 32, township 18 south, range 1 east</p>	Salt Lake Base and Meridian, and lots 3 and 4 northwest quarter, section 5, township 19 south, range 1 east, Salt Lake Base and Meridian, Sanpete County, Utah. <p>MS. LEWIS: We're having technical difficulty.</p> <p>CHAIRMAN JOHNSON: We're out of order. Let me get to the get part of my book here. Sorry.</p> <p>Okay. There it is. Okay. Ms. Lewis, you're representing the Division in this matter?</p> <p>MS. LEWIS: Yes.</p> <p>CHAIRMAN JOHNSON: Okay. And, Mr. Haas? Bryce Haas?</p> <p>MR. HAAS: Yes.</p> <p>CHAIRMAN JOHNSON: And you're representing yourself --</p> <p>MR. HAAS: Correct.</p> <p>CHAIRMAN JOHNSON: -- this morning?</p> <p>Okay. Ms. Lewis, would you, please, go ahead?</p> <p>MS. LEWIS: All right. The Division comes before you today to request the board to authorize several actions necessary to complete the reclamation of B&C Limestone Quarry.</p> <p>I will quickly -- before delving into the substance of the hearing, I'd like to inform the board that Mr. Haas, Respondent, has a long history with the both the Division and our sister agency SITLA.</p> <p>Consequently, in balance for an opportunity for the Respondent to be heard, the Division seeks the board's support in limiting the scope of the hearing to solely and freely request detail of the Division's satisfaction and those requests are: 1, to withdraw NOI M/039/013 for the B&C Limestone Quarry; 2, to forfeit the letter of credit, No. 015413040; direct the Division to complete reclamation, and to authorize a civil suit to recover costs from Bryce Haas; and, 3, take all actions necessary to reclaim the disturbed land.</p> <p>We seek these above actions of the board because I know Utah -- under the Utah Mine Reclamation Act, the board and the Division are the proper enforcement authority. Consequently, it is the division's duty to the public to ensure reclamation, defined as actions to shape, stabilize, revegetate or treat the land affected in order to achieve a safe, stable ecological condition and uses to be considered with local environmental conditions.</p> <p>So a brief history of the matter may be helpful for the board to give necessary context and focus for the substance of the hearing. In July 1999, Respondent listed himself as operator, submitted and the Division approved a notice of intention for small mining operations, S/039/013. This NOI held Respondent</p>
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<p>1 personally liable for completing the designated 2 operation and reclamation practices.</p> <p>3 During this time the Respondent also entered a 4 series of mineral leasing agreements with the landowner 5 leaving him personally liable for completing reclamation 6 in compliance with all Division rules and regulations.</p> <p>7 In 2001 Respondent expanded his operation 8 beyond the five acres of the limited -- five-acre limit 9 of the small mining operation entered interim, 10 transitional reclamation contract to govern the mine 11 while he prepared a large mine operation permit 12 application. This transitional contract held Respondent 13 personally liable for completing reclamation of his 14 operation, B&C Limestone Quarry. An official large mine 15 permit application was submitted, interviewed by the 16 Division, but never approved as final due to a lack of 17 surety to cover the extent of the larger operation. 18 Consequently, the transitional reclamation contract 19 governs the operation today.</p> <p>20 And these are just a few photos of the site 21 taken by SITLA last fall to give you an idea of the 22 condition of the site.</p> <p>23 Between 2006 and 2010, the Division 24 representatives conducted about 17 inspections of the 25 B&C Limestone Quarry to monitor Respondent's reclamation</p> <p style="text-align: right;">Page 6</p>	<p>1 called as a witness on behalf of the Division, being 2 duly sworn, was examined and testified as follows:</p> <p>3 MR. BAKER: I do.</p> <p>4 CHAIRMAN JOHNSON: Ms. Lewis, Mr. Baker will 5 be testifying as a fact witness today?</p> <p>6 MS. LEWIS: As a fact witness, yes.</p> <p>7 CHAIRMAN JOHNSON: Okay.</p> <p>8 MS. LEWIS: What is your name and position 9 with the Division of Oil and Gas and Mining?</p> <p>10 MR. BAKER: My name is Paul Baker and my 11 position is minerals program manager.</p> <p>12 MS. LEWIS: Could you please explain to the 13 board what your relevant educational and employment 14 background is?</p> <p>15 MR. BAKER: I have a bachelor's degree in 16 botany from Weber State College in 1982. I have a 17 master's degree in --</p> <p>18 THE REPORTER: In what? A degree in what?</p> <p>19 MR. BAKER: My first degree is a bachelor's in 20 botany from Weber State College in 1982, and I have a 21 master's degree in range ecology from Utah State 22 University in 1988.</p> <p>23 I began working for the State of Utah in 1986 24 at the Department of Agricultural in the seed 25 laboratory. I started working for the Division in 1991</p> <p style="text-align: right;">Page 8</p>
<p>1 activities. In addition to the length of the original 2 mineral leases, during this time, SITLA provided the 3 Respondent with four distinct opportunities to access 4 the land to complete reclamation, in total providing the 5 Respondent with three-and-a-half years to complete the 6 work.</p> <p>7 In March of 2010, the final Division 8 inspection confirmed the Respondent failed to 9 substantially conduct reclamation as required by Utah 10 law. A November inspection cataloged the state of the 11 quarry and the outstanding reclamations actions needed 12 to bring the quarry into compliance. Consequently, to 13 install the reclamation goals of the Utah Mine Land Act, 14 the Division respectfully presents the following 15 evidence in support of its three requests.</p> <p>16 At this time the Division would like to swear 17 in our primary witness, and I'd like to offer my 18 exhibits at the end.</p> <p>19 CHAIRMAN JOHNSON: Go ahead. Who is your 20 primary witness?</p> <p>21 MS. LEWIS: Our primary witness is Paul Baker.</p> <p>22 CHAIRMAN JOHNSON: Mr. Baker, can we swear you 23 in, please?</p> <p>24 MR. BAKER: Yes.</p> <p>25 PAUL BAKER,</p> <p style="text-align: right;">Page 7</p>	<p>1 in the coal regulatory program and I began with the 2 minerals regulatory program in 2001 and became minerals 3 program manager in 2008.</p> <p>4 MS. LEWIS: Would you please briefly explain 5 to the board what the minerals program manager does in 6 relation to the process of land?</p> <p>7 MR. BAKER: We, of course, regulate for 8 environmental compliance. We inspect mine sites to 9 ensure that operations are being conducted in accordance 10 with the rules. We ensure that reclamation is being 11 done properly. Those are our primary responsibilities.</p> <p>12 MS. LEWIS: At this time, the Division would 13 like to turn to its first request. The withdrawal NOI 14 M/039/013 of the B&C Limestone Quarry.</p> <p>15 Mr. Baker, under the Division rules and 16 statutes, what do you understand the elements the 17 Division must demonstrate to the board to terminate an 18 operator's notice of intention?</p> <p>19 MR. BAKER: As it says on the slide from the 20 Utah Code the -- the Division needs to -- or the board 21 needs to find that the operator has substantially failed 22 to perform reclamation or to conduct mining operations 23 so that the approved reclamation plan can be 24 accomplished.</p> <p>25 MS. LEWIS: Now, let me show you this document</p> <p style="text-align: right;">Page 9</p>

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<p>1 marked as Exhibit A. Are you familiar with this</p> <p>2 document?</p> <p>3 MR. BAKER: Yes, I am. This is the</p> <p>4 transitional reclamation contract that was entered into</p> <p>5 between Mr. Haas and the Division. On the left is the</p> <p>6 cover page and on the right is the signature page from</p> <p>7 Mr. Haas.</p> <p>8 MS. LEWIS: And is the -- the document signed</p> <p>9 by the Respondent?</p> <p>10 MR. BAKER: Yes, it is.</p> <p>11 MS. LEWIS: If so, when and why was Exhibit A</p> <p>12 entered and what impact does it have on the Respondent's</p> <p>13 reclamation obligations?</p> <p>14 MR. BAKER: It was entered into in 2001 and,</p> <p>15 as you explained earlier, what -- what had happened was</p> <p>16 the operator submitted notice of intention to commence</p> <p>17 small mining operations or an SMO, and the operator</p> <p>18 exceeded the acreage that was allowed under an SMO, the</p> <p>19 five acres.</p> <p>20 And since it takes some time to prepare and to</p> <p>21 approve a notice of intention to commence large meaning</p> <p>22 operations or an LMO, the Division entered this</p> <p>23 agreement with Mr. Haas for the interim period and so</p> <p>24 basically what -- what happens is this transitional</p> <p>25 reclamation contract becomes, in effect, the LMO until</p> <p style="text-align: right;">Page 10</p>	<p>1 mine notice and as -- is an equivalent governing</p> <p>2 document within the spirit of the withdrawal statute</p> <p>3 that is in the -- the act.</p> <p>4 MS. LEWIS: And referring --</p> <p>5 CHAIRMAN JOHNSON: Ms. Lewis, excuse me just a</p> <p>6 minute. Let's clarify what document it is we're talking</p> <p>7 about.</p> <p>8 MS. LEWIS: It's --</p> <p>9 CHAIRMAN JOHNSON: You call this Exhibit A?</p> <p>10 MS. LEWIS: Uh-huh.</p> <p>11 CHAIRMAN JOHNSON: Exhibit A is not what is</p> <p>12 on -- projected on the screen, is it?</p> <p>13 MS. LEWIS: It is. It just is the pertinent</p> <p>14 sections are taken out. If you go back to the --</p> <p>15 CHAIRMAN JOHNSON: Okay. Did the board get</p> <p>16 copies of Exhibit A?</p> <p>17 MR. QUIGLEY: Yes. What's been marked as</p> <p>18 Exhibit A.</p> <p>19 MR. JENSEN: Yes. It's in the list of</p> <p>20 exhibits.</p> <p>21 CHAIRMAN JOHNSON: Okay. So that was a</p> <p>22 hand-out this morning?</p> <p>23 MS. LEWIS: Yeah, it -- it was. Excuse me.</p> <p>24 CHAIRMAN JOHNSON: And what you are projecting</p> <p>25 on the screen, that is an excerpt from Exhibit A?</p> <p style="text-align: right;">Page 12</p>
<p>1 the LMO is approved.</p> <p>2 MS. LEWIS: All right. And you can see under</p> <p>3 paragraph 5 that the -- the contract is still -- is</p> <p>4 still in effect.</p> <p>5 Could you please read paragraph 6 in the</p> <p>6 transitional reclamation contract?</p> <p>7 THE REPORTER: I'm sorry, Counsel. I can't</p> <p>8 hear you. Can we get the microphones turned up a</p> <p>9 little?</p> <p>10 MS. LEWIS: Mr. Baker, could you please read</p> <p>11 paragraph 6 of the transitional reclamation contract and</p> <p>12 explain its meaning to the board?</p> <p>13 MR. BAKER: Paragraph 6 says, "The operator</p> <p>14 agrees to indemnify and hold harmless the State, board,</p> <p>15 and the Division from any claim, demand, liability,</p> <p>16 cost, charge, suit, or obligation of whatsoever nature</p> <p>17 arising from the failure of operator or operator's</p> <p>18 agents, employees, or contractors to comply with the</p> <p>19 contract."</p> <p>20 And so, basically -- I mean, as it says the --</p> <p>21 the operator has indemnified the Division against any</p> <p>22 objections, the Division's enforcement of the</p> <p>23 reclamation contract such as any time restrictions. And</p> <p>24 considering these factors, the transitional reclamation</p> <p>25 contract represents, really, a revision of the small</p> <p style="text-align: right;">Page 11</p>	<p>1 MS. LEWIS: Yes. It's the pertinent or</p> <p>2 relevant paragraphs of the document.</p> <p>3 CHAIRMAN JOHNSON: All right. Thank you.</p> <p>4 MS. LEWIS: Referring to the transitional</p> <p>5 reclamation contract preamble, paragraphs 1 and 4, as</p> <p>6 well as the reclamation obligations incorporated from</p> <p>7 the existing SMO, in your opinion, Mr. Baker, does the</p> <p>8 transitional reclamation contractually obligate</p> <p>9 Respondent to satisfactorily perform reclamation of the</p> <p>10 quarry?</p> <p>11 MR. BAKER: Yes, it does. As -- as it says in</p> <p>12 all of these sections, "The operator agrees to conduct</p> <p>13 reclamation.</p> <p>14 MS. LEWIS: Could you please describe for the</p> <p>15 board what these reclamation obligations are?</p> <p>16 MR. BAKER: Well, I think the board is -- is</p> <p>17 pretty much familiar with what's involved with</p> <p>18 reclamation but in this case the operator would need to</p> <p>19 demolish any structures and regrade the site, remove any</p> <p>20 -- anything that might be a hazard to the environment or</p> <p>21 to public health or safety, and leave the site in an</p> <p>22 ecologically stable condition, respread topsoil, if</p> <p>23 that's available and to revegetate the site.</p> <p>24 MS. LEWIS: And how does that Division make a</p> <p>25 determination under Utah Code 48-16-2 that an operator</p> <p style="text-align: right;">Page 13</p>

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<p>1 has substantially failed to reclaim the land?</p> <p>2 MR. BAKER: Well, of course, we give an</p> <p>3 operator a reasonable amount of time to conduct</p> <p>4 reclamation. And we conduct periodic inspections. We</p> <p>5 have an inspection and enforcement program and as -- as</p> <p>6 you mentioned, we've done several inspections over the</p> <p>7 last few years to document reclamation as it was being</p> <p>8 conducted or as it was not being conducted, to -- to see</p> <p>9 what progress was being made.</p> <p>10 And if operations or reclamations are not</p> <p>11 being done in compliance with the rules, we have the</p> <p>12 option of issuing notices of violation or cessation</p> <p>13 orders.</p> <p>14 MS. LEWIS: And were these inspections and</p> <p>15 enforcement procedures complied with the B&C Limestone</p> <p>16 Quarry and, if so, how -- how is it that you're familiar</p> <p>17 with these inspections and the state of the property?</p> <p>18 MR. BAKER: Yes, they were applied and -- as</p> <p>19 supervisor of the program, minerals program, I review</p> <p>20 all of the inspection reports. So I'm -- and I have</p> <p>21 visited the site, as well, so I am familiar with what's</p> <p>22 happened.</p> <p>23 MS. LEWIS: Could you please explain to the</p> <p>24 board what the document marked as Exhibit B on the</p> <p>25 screen is?</p> <p style="text-align: right;">Page 14</p>	<p>1 progress of the reclamation slowed and ultimately ceased</p> <p>2 to where the site is -- is not fully reclaimed.</p> <p>3 As I said, the buildings have been taken down</p> <p>4 but the foundations are still there. There's still</p> <p>5 several piles of material that need to be graded out.</p> <p>6 There's a well, a water well that needs to be taken care</p> <p>7 of. There's also a storage tank that's a potential</p> <p>8 problem. Potentially somebody could -- could fall into</p> <p>9 that and we're concerned about that. So there are some</p> <p>10 hazards.</p> <p>11 There's also an area where some of the</p> <p>12 material was partially buried and we're a little</p> <p>13 concerned about what -- what all might be there. Some</p> <p>14 of the -- the debris from demolition has been buried,</p> <p>15 but we don't know what else might be there, as well.</p> <p>16 MS. LEWIS: And would you please explain to</p> <p>17 the board what Exhibit C consists of?</p> <p>18 MR. BAKER: Exhibit C is a map of the</p> <p>19 disturbed area and there are some areas that have been</p> <p>20 reclaimed. I believe it's about 12.6 -- well, 12 acres,</p> <p>21 approximately, that's been regraded and about 16 acres</p> <p>22 that remains to be regraded.</p> <p>23 MS. LEWIS: Taking all the statutes and</p> <p>24 evidence presented here into consideration, what is your</p> <p>25 opinion about the Respondent's reclamation with B&C</p> <p style="text-align: right;">Page 16</p>
<p>1 MR. BAKER: Exhibit B is a -- a summary of the</p> <p>2 inspections that have been done or the inspection</p> <p>3 reports have been written from 2006 through 2010.</p> <p>4 MS. LEWIS: Are you familiar with Exhibit B</p> <p>5 and can you confirm you assisted in its preparation and</p> <p>6 it's an adequate representation and summary of the</p> <p>7 inspections completed?</p> <p>8 MR. BAKER: I am familiar, yes, and it is a</p> <p>9 good summary of -- of the inspection reports or the</p> <p>10 comments that were made in the inspection reports.</p> <p>11 MS. LEWIS: Just the -- the following section</p> <p>12 will be talking specifically about outstanding actions</p> <p>13 needing to occur. There will be some photos if you'd</p> <p>14 like to see them, and those were taken by SITLA in the</p> <p>15 fall of this year so just for your knowledge about the</p> <p>16 state of the study.</p> <p>17 Can you please summarize for the board the</p> <p>18 findings of these inspections and, also, would you</p> <p>19 please explain the nature and order of the photos to be</p> <p>20 displayed?</p> <p>21 MR. BAKER: I think in general what I could</p> <p>22 say about the inspections is that beginning at about</p> <p>23 2005 or 2006, Mr. Haas was -- was doing reclamation and</p> <p>24 had torn down most of the buildings and had done some</p> <p>25 regrading. But starting in about 2008 or so, the -- the</p> <p style="text-align: right;">Page 15</p>	<p>1 Limestone Quarry?</p> <p>2 MR. BAKER: It is not complete. That's --</p> <p>3 that's the bottom line is that we feel that we've given</p> <p>4 him every opportunity to conduct the reclamation and it</p> <p>5 hasn't been completed.</p> <p>6 MS. LEWIS: The Division would now like to</p> <p>7 turn to its second request, just a brief note on this</p> <p>8 request. This request is really three separate</p> <p>9 requests, it just provides the Division with all the</p> <p>10 necessary tools to actually complete reclamation so</p> <p>11 it'll be a couple different subparts of it.</p> <p>12 What do you understand -- so per Division's</p> <p>13 request No. 2, we're requesting a letter to forfeit, No.</p> <p>14 015413040, to direct the Division to complete</p> <p>15 reclamation and to authorize a civil suit to recover</p> <p>16 costs from Bryce Haas.</p> <p>17 Mr. Baker, what do you understand the</p> <p>18 Division's rules or statutes require the board to</p> <p>19 forfeit a letter of credit for surety?</p> <p>20 MR. BAKER: Well, the board needs to make a</p> <p>21 finding that the operator has failed to substantially</p> <p>22 complete reclamation and then to forfeit the surety and</p> <p>23 then order the board -- or order the Division to conduct</p> <p>24 reclamation using the funds from the surety.</p> <p>25 MS. LEWIS: Okay. And, Mr. Baker, could you</p> <p style="text-align: right;">Page 17</p>

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<p>1 please explain to the board the document marked as 2 Exhibit D? D, not C, but D. 3 MR. BAKER: Exhibit D is the letter of credit 4 that was issued to Mr. Haas by Far West Bank and it was 5 being held hence the reclamation surety. 6 MS. LEWIS: And could you please explain to 7 the board the current status of this letter of credit 8 and what exactly the Division is requesting of the board 9 in regards to it? 10 MR. BAKER: Earlier -- earlier in 2010 we 11 received notice from the bank that this letter of credit 12 was not going to be renewed and so we -- the Division 13 submitted a side draft to the bank asking that they -- 14 they, the funds -- give the funds to the Division, which 15 they did. 16 The Division received a check on October 21st, 17 2010, in the amount of \$36,000 from the bank and that -- 18 that money is basically being held in escrow at this 19 point pending the board's action. 20 MS. LEWIS: As discussed above, in your 21 opinion, has the Respondent substantially failed to 22 reclaim the B&C Limestone Quarry and, therefore, is the 23 board warranting -- warranted in ordering this letter of 24 credit forfeited? 25 MR. BAKER: Yes, I believe that's correct that</p> <p style="text-align: right;">Page 18</p>	<p>1 there's anything to forfeit today. I think what the 2 issue -- or the -- the issue is is approval to get at 3 the funds, which are now held in escrow by the Division. 4 MS. LEWIS: Yeah. Yes, I think that would be 5 an accurate description of what's occurring. 6 MR. JENSEN: Okay. Thank you. 7 MS. LEWIS: Uh-huh. 8 So what do you understand the Division's rules 9 or statutes require the board to direct the Division to 10 conduct reclamation? 11 MR. BAKER: Well, as I said earlier, if the 12 operator fails or refuses to conduct reclamation -- the 13 rules state that if the operator fails or refuses to 14 conduct reclamation, then the board may order that 15 reclamation be *** completed by the Division. 16 MS. LEWIS: And as discussed above, in your 17 opinion, the Respondent failed to, substantially, to 18 reclaim the B&C Limestone Quarry and the board is, 19 therefore, warranted in ordering the Division -- 20 directing the Division to conduct reclamation? 21 MR. BAKER: Yes, that's correct. 22 MS. LEWIS: Mr. Baker, what do you understand 23 the Division's rules or statutes required the board to 24 authorize the Division to pursue a civil action against 25 Bryce Haas to collect the surety, any costs not</p> <p style="text-align: right;">Page 20</p>
<p>1 reclamation -- he has substantially failed to complete 2 reclamation and that the board should forfeit the 3 surety. 4 MS. LEWIS: This is our second tool we're 5 asking for in our request for request 2. 6 MR. JENSEN: May I ask a question? 7 CHAIRMAN JOHNSON: Mr. Jensen. 8 MR. JENSEN: Counsel, if the -- if the bank 9 has tendered payment, the letter of credit doesn't exist 10 anymore, does it? 11 MS. LEWIS: It -- when we first presented the 12 notice of agency action in October, we had not presented 13 the site draft yet for the credit -- letter of credit. 14 So we are kind of asking that since we already have the 15 money, that the board authorize that we actually access 16 it and use it. So -- if I understand the question 17 correctly. 18 MR. JENSEN: It seems to me the issue is the 19 ability to now get at the money, which you have. I 20 would be surprised that that letter of credit still 21 exists anywhere. I think that in order for the bank to 22 make the payment, you'd have to tender the letter of 23 credit to the bank and they'd issue you a cashier's 24 check. 25 So I think just procedurally, I don't think</p> <p style="text-align: right;">Page 19</p>	<p>1 recovered by the -- not covered by the surety? 2 MR. BAKER: As it -- as it states in the 3 slide, Rule R647-4-114, it says, "If the operator fails 4 or refuses to conduct reclamation, the board may, after 5 noticing the hearing, order that the costs and expenses 6 of reclamation together with the costs of collection, 7 including attorneys' fees, be recovered in a civil 8 action brought by the Attorney General against the 9 operator in the appropriate court." 10 MS. LEWIS: And has Mr. Haas entered any 11 documents establishing personal liability for the amount 12 of the surety and any additional costs incurred by -- 13 incurred in reclamation of the quarry? 14 MR. BAKER: As we -- we discussed earlier, we 15 have the transitional reclamation contract, which is his 16 agreement that he would conduct reclamation. 17 MS. LEWIS: And, also, would you, please, read 18 paragraph 11? 19 MR. BAKER: Paragraph 11 says, "In the event 20 of forfeiture of the surety, operator shall be liable 21 for any additional costs in excess of the surety amount 22 which are required to comply with this contract. Any 23 excess moneys resulting from forfeiture of the surety 24 upon completion of the reclamation in compliance with 25 this contract shall be returned to the claimant."</p> <p style="text-align: right;">Page 21</p>

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<p>1 MS. LEWIS: And in your opinion do you feel 2 that there may be costs beyond the surety which the 3 Division should pursue? 4 MR. BAKER: I -- I -- we don't know exactly 5 how much reclamation's going to cost. Certainly, we 6 don't know that until reclamation occurs. But there are 7 several things that -- well, first of all, \$36,000 is 8 not a lot of money for reclaiming 16 acres including 9 some of the things like breaking up foundations, 10 covering the well or taking care of the well and the 11 water tank. 12 In addition, there could be things on site 13 that we're not aware of. So it's -- we -- to be honest, 14 we don't know whether we can do it for that much. But 15 it's very possible that there could be additional costs, 16 I think likely. 17 MS. LEWIS: The Division would now like to 18 present its third request. 19 CHAIRMAN JOHNSON: Ms. Lewis, before you move 20 on -- 21 MS. LEWIS: Uh-huh. 22 MR. HAROUNY: Is -- is the site being used 23 right now by Mr. Haas in any way? 24 MR. BAKER: No, it's not. 25 MR. HAROUNY: And we don't have an estimate of</p> <p style="text-align: right;">Page 22</p>	<p>1 MR. HAROUNY: Okay. 2 MS. LEWIS: He -- we -- just one second. Can 3 I confer with my client? 4 I feel like this may be addressed after 5 Mr. Haas's presentation and we have John Blake from 6 SITLA to address those issues, as well. 7 MR. HAROUNY: Okay. Thank you. 8 CHAIRMAN JOHNSON: Mr. Baker, I've got a 9 couple of questions. How is the figure \$36,000 arrived 10 at? 11 MR. BAKER: To be honest, I don't know the 12 history of that. It was done in 2001 and the 13 disturbance area was less than it is now. I haven't 14 looked at the actual calculations so I don't know. I 15 assume that one of the engineers looked at the site and 16 did a site-specific calculation but, like I said, I 17 didn't look at that. 18 MS. LEWIS: We do have a representative of the 19 Division that can answer that question if you'd like to 20 have him sworn in. 21 CHAIRMAN JOHNSON: Are you planning to have 22 Mr. Kunzler testify later? 23 MS. LEWIS: I was planning on having him be a 24 rebuttal witness. 25 CHAIRMAN JOHNSON: Okay. I'll -- I'll wait --</p> <p style="text-align: right;">Page 24</p>
<p>1 how much it's going to cost to -- to do this, correct? 2 MR. BAKER: We -- we've have made an attempt 3 at -- at calculating what the costs would be. But -- 4 but, like I say, it's not -- it's -- the figure that we 5 have is a little bit more than 36,000, I think it was 6 like 38,000. But, as I said, there could be things that 7 we encounter that could bring it to a greater amount 8 than that. 9 MR. HAROUNY: Has Mr. Haas submitted any kind 10 of proposals or anything to you at all? 11 MR. BAKER: No. In fact, at this point, this 12 is land that's owned by the Trust Lands Administration 13 and John Blake can go into this in more detail, but he's 14 been prohibited from entering the property. 15 MS. LEWIS: And we can discuss that if you'd 16 like, as well. There are rebuttal witnesses after 17 Mr. Haas has an opportunity to present. So -- 18 CHAIRMAN JOHNSON: Excuse me, Ms. Lewis. 19 MS. LEWIS: Uh-huh. 20 MR. HAROUNY: So -- so if he's prohibited, he 21 can't -- to enter the property, he can't even get an 22 estimate of how much it's going to cost him to -- to 23 reclaim the property, correct? 24 MR. BAKER: Well, I guess that may -- that may 25 be true, yes.</p> <p style="text-align: right;">Page 23</p>	<p>1 a rebuttal witness? 2 MS. LEWIS: Yes. So after Mr. Haas's 3 presentation both Lynn Kunzler and also Mr. Baker can 4 answer any specific questions about reclamation -- 5 outstanding reclamation obligations or the original 6 amount of the surety, the -- the cost of that. 7 CHAIRMAN JOHNSON: Okay. So I would like to 8 understand where the \$36,000 figure came from at this 9 time so -- 10 MS. LEWIS: Okay. 11 CHAIRMAN JOHNSON: -- if you don't mind 12 swearing Mr. Kunzler and having him address that, I 13 would appreciate it. 14 MS. LEWIS: Certainly. At this time I'd like 15 to swear in Lynn Kunzler from the Division of Oil Gas 16 and Mining. 17 LYNN KUNZLER, 18 called as a witness on behalf of the Division, being 19 duly sworn, was examined and testified as follows: 20 MR. KUNZLER: I do. 21 THE REPORTER: Thank you. Can we turn up that 22 mic? 23 MR. KUNZLER: To answer that question, at the 24 time it was discovered that he had gone over the acreage 25 for a small mining operation --</p> <p style="text-align: right;">Page 25</p>

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<p>1 CHAIRMAN JOHNSON: And you say, "at the time,"</p> <p>2 when would that be?</p> <p>3 MR. KUNZLER: That was approximately 2001.</p> <p>4 CHAIRMAN JOHNSON: So he exceeded five acres?</p> <p>5 MR. KUNZLER: Yes, he had exceeded the five</p> <p>6 acre for a small mining operation. We took the amount</p> <p>7 of acreage that was disturbed at that time and applied</p> <p>8 an average cost per acre that we were using for a small</p> <p>9 mine bonding, multiplied it out and that's where we come</p> <p>10 up with the 36,000.</p> <p>11 CHAIRMAN JOHNSON: At that time about how many</p> <p>12 acres had been disturbed?</p> <p>13 MR. KUNZLER: Approximately eight acres.</p> <p>14 CHAIRMAN JOHNSON: Eight acres. So roughly</p> <p>15 that's \$4500 per acre, is that the figure being used?</p> <p>16 MR. KUNZLER: Yes.</p> <p>17 CHAIRMAN JOHNSON: Okay. Isn't it common</p> <p>18 practice that -- that the -- the bond amount would be</p> <p>19 reviewed on a periodic basis and increased if the</p> <p>20 circumstances have changed or the amount of disturbed</p> <p>21 area has changed?</p> <p>22 MR. KUNZLER: Yes, it is. And --</p> <p>23 CHAIRMAN JOHNSON: Was that done in this case?</p> <p>24 MR. KUNZLER: This was a -- an interim surety</p> <p>25 in this case and after we had reviewed the large mining</p> <p style="text-align: right;">Page 26</p>	<p>1 reclaim part of the area, and we -- part of that</p> <p>2 agreement was that we would receive an extra \$6500 in</p> <p>3 bond, which we never did. But -- but he -- he did</p> <p>4 reclaim part of the area.</p> <p>5 CHAIRMAN JOHNSON: Mr. Baker, looking at</p> <p>6 Exhibit C, which is the map of the disturbed area,</p> <p>7 there's an unclaimed quarry area and then there's a</p> <p>8 reclaimed area that are pictured.</p> <p>9 MR. BAKER: Yes.</p> <p>10 CHAIRMAN JOHNSON: Okay. So the area that you</p> <p>11 say Mr. Haas reclaimed, that's what's indicated, it's</p> <p>12 the south part of this property?</p> <p>13 MR. BAKER: Yes, that's correct.</p> <p>14 CHAIRMAN JOHNSON: And just eyeballing it, is</p> <p>15 that about 40 percent of the total disturbed area?</p> <p>16 MR. BAKER: I'd say that's about right, yes.</p> <p>17 CHAIRMAN JOHNSON: Okay. The -- the</p> <p>18 unclaimed -- the unreclaimed quarry area, how many acres</p> <p>19 is that?</p> <p>20 MR. BAKER: So I believe that's about 16</p> <p>21 acres.</p> <p>22 CHAIRMAN JOHNSON: Sixteen acres that are</p> <p>23 still unreclaimed.</p> <p>24 MR. QUIGLEY: It's shown on that map.</p> <p>25 CHAIRMAN JOHNSON: Oh, okay. It's in the</p> <p style="text-align: right;">Page 28</p>
<p>1 operation, we had calculated a bond that was</p> <p>2 considerably higher. It was --</p> <p>3 CHAIRMAN JOHNSON: Higher than the 36,000?</p> <p>4 MR. KUNZLER: Yeah, it was close to 68,000 to</p> <p>5 reclaim the site and what he had proposed in the large</p> <p>6 mining operation.</p> <p>7 CHAIRMAN JOHNSON: Okay. So was the bond</p> <p>8 increased or did the Division attempt to increase the</p> <p>9 bond at that time?</p> <p>10 MR. KUNZLER: We attempted to increase it.</p> <p>11 Mr. Haas met with the Division at that time. He could</p> <p>12 not come up with the additional moneys. Agreements</p> <p>13 were -- were made to try to work out doing either</p> <p>14 partial reclamation or giving us additional moneys on a</p> <p>15 schedule to increase the bond so that the bond amount</p> <p>16 would match the liability for reclamation. But that</p> <p>17 never happened.</p> <p>18 MR. BAKER: I can answer the mystery.</p> <p>19 CHAIRMAN JOHNSON: Mr. Baker.</p> <p>20 MR. BAKER: Mr. Haas submitted an LMO in 2001</p> <p>21 and the Division issued tentative approval in 2003. At</p> <p>22 that time we required the surety of \$68,400. We had the</p> <p>23 36,000, we required 68,400. After about a year of not</p> <p>24 receiving the bond, we withdrew the tentative approval</p> <p>25 and after a series of meetings, Mr. Haas agreed to</p> <p style="text-align: right;">Page 27</p>	<p>1 legend, 16.07.</p> <p>2 MR. BAKER: Yes. Right.</p> <p>3 MS. LEWIS: With the red and the blue is the</p> <p>4 previously reclaimed.</p> <p>5 CHAIRMAN JOHNSON: All right. Thank you.</p> <p>6 MS. LEWIS: Any other questions from the board</p> <p>7 on this issue?</p> <p>8 So at this point in time the Division would</p> <p>9 like to move on to its third request, to authorize the</p> <p>10 Division to take all their necessary act -- reclamation</p> <p>11 actions.</p> <p>12 So, Mr. Baker, what do you understand Division</p> <p>13 rules or statutes to authorize regarding actions not</p> <p>14 contemplated under the statutes or rules but necessary</p> <p>15 to complete reclamation and do you feel this will be</p> <p>16 necessary?</p> <p>17 MR. BAKER: As it says on this slide, "The</p> <p>18 board and the Division have the power and the duties to</p> <p>19 do all of the things and take other actions within the</p> <p>20 purpose of the act necessary to enforce its provisions."</p> <p>21 And, as I stated previously, we -- we don't</p> <p>22 know exactly what's going to be encountered when</p> <p>23 reclamation is being done and so this is kind of a</p> <p>24 caveat provision that we're asking -- permission that</p> <p>25 we're asking for to be able to take whatever actions are</p> <p style="text-align: right;">Page 29</p>

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<p>1 necessary.</p> <p>2 MS. LEWIS: At this time, before I conclude,</p> <p>3 I'd like to move to enter Exhibits A through D and,</p> <p>4 also, rebuttal -- a rebuttal Exhibit A into evidence.</p> <p>5 And I --</p> <p>6 CHAIRMAN JOHNSON: We haven't gone through</p> <p>7 rebuttal Exhibit A, have we?</p> <p>8 MS. LEWIS: A was the -- is the transitional</p> <p>9 reclamation, we haven't yet. No. I should say that --</p> <p>10 CHAIRMAN JOHNSON: Let's hold off on that. So</p> <p>11 you want to enter Exhibits A through D?</p> <p>12 MS. LEWIS: Yes.</p> <p>13 CHAIRMAN JOHNSON: Mr. Haas, do you have any</p> <p>14 objections to any of those exhibits?</p> <p>15 MR. HAAS: Every one of them.</p> <p>16 CHAIRMAN JOHNSON: Okay. Can you tell us</p> <p>17 briefly what your objections are?</p> <p>18 MR. HAAS: Well, first of all, the acreage</p> <p>19 that was restored to get to the \$36,000, how we came to</p> <p>20 the \$36,000 is I met with the Division and substantially</p> <p>21 reclaimed the quarry, okay, seeding and all.</p> <p>22 CHAIRMAN JOHNSON: Okay. Mr. Haas, let --</p> <p>23 let's -- you'll get an opportunity to -- to describe to</p> <p>24 the board what transpired. But let's talk about just</p> <p>25 the exhibits first. Exhibit A is the transitional</p> <p style="text-align: right;">Page 30</p>	<p>1 MR. HAAS: No.</p> <p>2 CHAIRMAN JOHNSON: You have not?</p> <p>3 MR. HAAS: Not to my knowledge, no.</p> <p>4 CHAIRMAN JOHNSON: Okay. Exhibit C is the map</p> <p>5 of the -- of the mine site showing the disturbed area</p> <p>6 and the reclaimed area. Are you -- you're familiar with</p> <p>7 that map?</p> <p>8 MR. HAAS: Yes, correct.</p> <p>9 CHAIRMAN JOHNSON: Okay. Do you have any</p> <p>10 objections to that map --</p> <p>11 MR. HAAS: No.</p> <p>12 CHAIRMAN JOHNSON: -- being entered?</p> <p>13 MR. HAAS: No.</p> <p>14 CHAIRMAN JOHNSON: And Exhibit D is the letter</p> <p>15 of credit from Far West Bank from 2001. Do you have any</p> <p>16 objections to that --</p> <p>17 MR. HAAS: No.</p> <p>18 CHAIRMAN JOHNSON: -- document? Okay. Okay.</p> <p>19 So let's enter Exhibits A, C and D for now. Exhibit B</p> <p>20 is the summary of inspection reports.</p> <p>21 (Division Exhibits A, C and D were received</p> <p>22 into evidence.)</p> <p>23 CHAIRMAN JOHNSON: Ms. Lewis, you touched on</p> <p>24 that very briefly.</p> <p>25 MS. LEWIS: Uh-huh.</p> <p style="text-align: right;">Page 32</p>
<p>1 reclamation contract. Okay?</p> <p>2 MR. HAAS: Yes.</p> <p>3 CHAIRMAN JOHNSON: And the Division would like</p> <p>4 to just enter that into the record?</p> <p>5 MR. HAAS: Fine.</p> <p>6 CHAIRMAN JOHNSON: Do you have any problems</p> <p>7 with that --</p> <p>8 MR. HAAS: No.</p> <p>9 CHAIRMAN JOHNSON: -- document?</p> <p>10 MR. HAAS: I do not.</p> <p>11 CHAIRMAN JOHNSON: Okay. Exhibit B is a</p> <p>12 summary of inspection reports. Have you read that?</p> <p>13 MR. HAAS: No, I have not.</p> <p>14 CHAIRMAN JOHNSON: Okay. Have you been</p> <p>15 provided a copy of it?</p> <p>16 MR. HAAS: Not to my knowledge, no.</p> <p>17 CHAIRMAN JOHNSON: Okay.</p> <p>18 MS. LEWIS: We -- we did talk about this --</p> <p>19 these exhibits yesterday and he has been e-mailed a</p> <p>20 version of them. So --</p> <p>21 CHAIRMAN JOHNSON: Mr. Haas, have you received</p> <p>22 copies of all -- all inspection reports when the</p> <p>23 Division has come to inspect the property --</p> <p>24 MR. HAAS: No.</p> <p>25 CHAIRMAN JOHNSON: -- through the years?</p> <p style="text-align: right;">Page 31</p>	<p>1 CHAIRMAN JOHNSON: Would you please go through</p> <p>2 that document in a little more detail or let us know</p> <p>3 what's in that document? And, Mr. Haas, do you have a</p> <p>4 copy of that in front of you?</p> <p>5 MR. HAAS: No.</p> <p>6 CHAIRMAN JOHNSON: Ms. Lewis, do you have a</p> <p>7 copy?</p> <p>8 MS. LEWIS: Yeah. I have a copy of it. I'm</p> <p>9 going to defer to Mr. Kunzler to go through the summary</p> <p>10 as he has been the -- the man on the job conducting most</p> <p>11 of these inspections. And it's really just</p> <p>12 demonstrative of all the other inspection summaries that</p> <p>13 are -- inspection -- inspections that the Division has</p> <p>14 done throughout the year. So it's just kind of a</p> <p>15 compilation of all of them.</p> <p>16 CHAIRMAN JOHNSON: But those individual</p> <p>17 inspections are not being entered as exhibits, correct?</p> <p>18 MS. LEWIS: Yes, yes.</p> <p>19 CHAIRMAN JOHNSON: Okay. So I think it would</p> <p>20 be prudent for us to go through the summary.</p> <p>21 MR. PAYNE: Mr. Chairman, we have not had Mr.</p> <p>22 Kunzler describe his relationship to this or introduce</p> <p>23 himself? Maybe we should do that.</p> <p>24 CHAIRMAN JOHNSON: Okay. That's a good point.</p> <p>25 Ms. Lewis, would you set some foundation, please,</p> <p style="text-align: right;">Page 33</p>

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<p>1 regarding Mr. Kunzler?</p> <p>2 MS. LEWIS: Mr. Kunzler, could you please</p> <p>3 state your title and position with the Division and your</p> <p>4 duties for the Division?</p> <p>5 MR. KUNZLER: I am currently a senior</p> <p>6 reclamation specialist with the Division. As -- part of</p> <p>7 my duties in that position is to not only review and</p> <p>8 permit applications to -- that are submitted but to</p> <p>9 conduct periodic inspections of mines within an assigned</p> <p>10 area that I have within the state and for several years</p> <p>11 the Sanpete County where this particular quarry is</p> <p>12 located, I did have the assignment to conduct those</p> <p>13 periodic inspections.</p> <p>14 MS. LEWIS: Would you please explain to the</p> <p>15 Division -- or the -- briefly give a summary of what's</p> <p>16 happening for them, the specifics about your individual</p> <p>17 inspections?</p> <p>18 MR. KUNZLER: Okay. On these inspections</p> <p>19 and -- I maybe should start at the bottom and work up</p> <p>20 rather -- to get a more chronological order from oldest</p> <p>21 to the newest.</p> <p>22 In October of 2006 I inspected the site. The</p> <p>23 operator had filed for bankruptcy and failed to maintain</p> <p>24 a surety and upon learning that the letter of credit</p> <p>25 would be renewed -- or would not be renewed, the</p> <p style="text-align: right;">Page 34</p>	<p>1 and -- but he, at that time, did appear to be diligent</p> <p>2 in doing reclamation.</p> <p>3 In April, the reclamations were -- activities</p> <p>4 hadn't changed a lot but were close to being on a</p> <p>5 schedule that we had agreed to at that time to get that</p> <p>6 reclamation completed.</p> <p>7 In September of 2007 inspection, reclamation</p> <p>8 should have been near -- you know, essentially completed</p> <p>9 with the exception of seeding at that time. And there</p> <p>10 had been virtually no reclamation or change in the</p> <p>11 appearance of the site between that and when I inspected</p> <p>12 in April.</p> <p>13 In May of 2008 there had been additional</p> <p>14 reclamation. The office building had been razed at that</p> <p>15 time and Mr. Haas was, again, doing some reclamation</p> <p>16 work.</p> <p>17 In March of 2009 there was still equipment on</p> <p>18 the site and there was still a considerable amount of</p> <p>19 regrading that needed to be done.</p> <p>20 In July of 2009, inspection was conducted to</p> <p>21 review with SITLA, the land managing agency, and the</p> <p>22 operator determined what needed to be done to complete</p> <p>23 the reclamation at the site.</p> <p>24 In August SITLA had inspected the site and had</p> <p>25 expressed concerns to the Division that no work had been</p> <p style="text-align: right;">Page 36</p>
<p>1 operator was instructed it had begun reclamation</p> <p>2 activities at the site.</p> <p>3 In November of 2006 I was notified that</p> <p>4 Mr. Haas was issued a cessation order, that had not been</p> <p>5 abated by maintaining an adequate surety or a request</p> <p>6 for a stop-work conference to modify that order. A</p> <p>7 civil penalty was assessed at that time.</p> <p>8 November 13th of 2006, inspection found that</p> <p>9 the mine was inactive and appeared abandoned without the</p> <p>10 reclamation work required by the cessation order.</p> <p>11 Several, apparently, abandoned vehicles, machinery, were</p> <p>12 also observed at the site and the report recommended the</p> <p>13 site be reclaimed and the operator notified that he is</p> <p>14 in failure to abate the situation.</p> <p>15 In November 17th of 2006, referred back to</p> <p>16 inspection made of -- in August, that found the site</p> <p>17 inactive with some auxiliary reclamation activities but</p> <p>18 no reclamation on the actual quarry site, itself.</p> <p>19 Inspector contacted Bryce Haas, that would have been me,</p> <p>20 to discuss the reclamation requirements and the</p> <p>21 reclamation surety deadline of October 31st of that</p> <p>22 year.</p> <p>23 In February of 2007, inspection found the</p> <p>24 operator is close to completing reclamation by the time.</p> <p>25 Again, there was still activity going on at the site</p> <p style="text-align: right;">Page 35</p>	<p>1 done. And there had been little reclamation work, if</p> <p>2 any, and much grading would need to be done to complete</p> <p>3 the reclamation.</p> <p>4 In January of 2010 there had been no</p> <p>5 reclamation work completed since the August visit and in</p> <p>6 March of 2010 we determined that he had substantially</p> <p>7 failed to reclaim the site.</p> <p>8 MS. LEWIS: And then, Mr. Kunzler, for the</p> <p>9 board's -- would you mind explaining to the board about</p> <p>10 the photos you see represented?</p> <p>11 MR. KUNZLER: Okay. Photos that are here were</p> <p>12 took --</p> <p>13 CHAIRMAN JOHNSON: Ms. Lewis, are these going</p> <p>14 to be entered as exhibits?</p> <p>15 MS. LEWIS: They're just as examples. They</p> <p>16 don't have to be entered as exhibits but would you like</p> <p>17 them to be? Yeah. We can enter them as exhibits.</p> <p>18 CHAIRMAN JOHNSON: If you're going to take the</p> <p>19 time to go through them, I would rather have them --</p> <p>20 MS. LEWIS: Okay.</p> <p>21 CHAIRMAN JOHNSON: -- enter them as exhibits.</p> <p>22 MS. LEWIS: They're really not any specific</p> <p>23 reclamation activities but just to give the board</p> <p>24 examples of the state of the quarry.</p> <p>25 CHAIRMAN JOHNSON: Yes. Before -- thank you,</p> <p style="text-align: right;">Page 37</p>

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<p>1 Mr. Payne. Before we move forward, Ms. Lewis, do you 2 have any other questions regarding Exhibit B for 3 Mr. Kunzler and help him explain what this document is? 4 MS. LEWIS: I don't have any more for 5 Mr. Kunzler. Just with the added note that this is just 6 a summary of the -- summary inspection reports and that 7 the Division did go back one other time in November and 8 perhaps Mr. Kunzler should address that, the final 9 inspection, the most recent inspection and what they 10 found there. 11 CHAIRMAN JOHNSON: Does that deal with this 12 Exhibit B? 13 MS. LEWIS: No. 14 CHAIRMAN JOHNSON: Okay. Let's move -- let's 15 come back to them. Okay. Mr. Haas, so this Exhibit B 16 is a summary of items taken from Mr. Kunzler's 17 inspection reports. Now, if you disagree with anything 18 that he has reported, you'll have an opportunity to talk 19 about that later. 20 But as far as this document, which is just a 21 summary of his reports, do you have any objection to the 22 document, itself? I understand you may have concerns 23 about some of the things he has stated and we'll address 24 those later, but as -- but as far as just the record of 25 our proceedings today, do you have any -- any objections</p> <p style="text-align: right;">Page 38</p>	<p>1 MR. HAAS: That's fine. 2 CHAIRMAN JOHNSON: -- as -- as a document, 3 itself, I don't believe you have any objections -- 4 MR. HAAS: No, that's fine. 5 CHAIRMAN JOHNSON: -- to the document, itself, 6 but we will get into your problems and particulars. 7 Okay? 8 So Exhibit B will be entered. 9 (Division Exhibit B was received into evidence.) 10 MR. JENSEN: Mr. Chairman, I have a question, 11 just a clarification. Ms. Lewis, on the February 15th, 12 '07 entry, operator is close to completing reclamation 13 by timelines in 12/06/2006 reclamation agreement. 14 Is there another agreement? 15 MS. LEWIS: My understanding is Mr. Kunzler 16 will address this, that there was kind of an oral 17 letter, agreement, it wasn't an official agreement that 18 the Division and Mr. Haas came to. 19 CHAIRMAN JOHNSON: What's an oral letter 20 agreement? 21 MS. LEWIS: Well, it was -- it was an oral 22 agreement -- 23 MR. JENSEN: It's an oxymoron. 24 MS. LEWIS: -- and it was -- there is a letter 25 that followed. They came to at the site.</p> <p style="text-align: right;">Page 40</p>
<p>1 to this document? 2 MR. HAAS: Yes, I do. 3 CHAIRMAN JOHNSON: Okay. You have objections 4 to this document being entered into the record? 5 MR. HAAS: I do. 6 CHAIRMAN JOHNSON: And what are those 7 objections? 8 MR. HAAS: The objections are that there was 9 reclamation that was going on and I was also being 10 permitted to operate my sawing ability on this quarry 11 because I had another adjacent quarry. And we were 12 being permitted by SITLA to operate on that quarry to 13 keep another quarry alive because all the sawing 14 applications were on this quarry. 15 We were using the site and when we went out 16 and made our final inspection, or preliminary inspection 17 I'm going to say, we walked through and there was five 18 acres that was unreclaimed plus an additional two acres 19 around the shop -- 20 CHAIRMAN JOHNSON: Okay. 21 MR. HAAS: -- including the well. 22 CHAIRMAN JOHNSON: Mr. Haas, we will get into 23 what your objections are to the specifics of this 24 document. However, this document is just a summary of 25 Mr. Kunzler's inspection notes. So --</p> <p style="text-align: right;">Page 39</p>	<p>1 CHAIRMAN JOHNSON: So it was a verbal 2 agreement -- 3 MS. LEWIS: A verbal agreement that was 4 later -- 5 CHAIRMAN JOHNSON: -- that was followed up 6 with a letter? 7 MS. LEWIS: Yes. 8 MR. KUNZLER: And if I could address that. 9 That agreement was not made by myself, it was made by 10 Mary Ann Wright who, at the time, was our associate 11 director of mining, and Susan White, who was the 12 minerals program manager. They conducted a visit at the 13 site on that date with the operator and had made the 14 agreement at that time, what was not part of the 15 agreement. 16 MR. JENSEN: Okay. So what's the effect of 17 the December '06 agreement relative to the original 18 transitional reclamation contract? 19 MR. KUNZLER: My understanding of the 20 agreement was they had given him a time frame to 21 complete the reclamation of the site. 22 MR. JENSEN: So it wasn't intended to modify 23 the original contract. 24 MR. KUNZLER: No, it was not. It was just a 25 -- an agreement to meet a particular time frame and</p> <p style="text-align: right;">Page 41</p>

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<p>1 other factors in getting the reclamation completed 2 there. 3 MR. JENSEN: And you're not relying on the 4 December '06 agreement? 5 THE WITNESS: No. 6 MR. JENSEN: For purposes of this hearing. 7 MS. LEWIS: And, Mr. Kunzler, did the letter 8 change any of his obligations or rec- -- general 9 reclamation obligations? 10 MR. KUNZLER: To my knowledge, that agreement 11 had nothing -- no effect on his requirements to complete 12 reclamation. 13 MR. JENSEN: Thank you. 14 MR. HAAS: And that is correct. He's correct 15 in that statement. 16 CHAIRMAN JOHNSON: Okay. Ms. Lewis, we are 17 still receiving testimony from Mr. Baker so -- 18 MS. LEWIS: Yes. 19 CHAIRMAN JOHNSON: -- we have entered Exhibits 20 A through D. Would you like to continue with your 21 questioning for Mr. Baker? 22 MS. LEWIS: At this time my questioning of 23 Mr. Baker is concluded but I would like to reserve the 24 opportunity to present now a -- Mr. Kunzler rebuttal to 25 Mr. Haas's presentation.</p> <p style="text-align: right;">Page 42</p>	<p>1 SITLA, my equipment was ten miles from the location and 2 it was tied to this bond at one time. It's -- it's a 3 different location. I spoke to him and said, "My 4 equipment's ten miles away. I'm going to go over here, 5 I'm going to reclamate this -- this other quarry because 6 I'm close. I don't want to move equipment three times. 7 We did reclamate that quarry. It has not had 8 the seeding redone to it but it is reclaimed and Lynn 9 Kunzler came out and I think John Blake did, if I 10 remember right, and said, "Okay. We're good with the 11 reclamation. We need to, you know, hold some money in 12 reserve for the seeding." 13 CHAIRMAN JOHNSON: Was this in 2009, Mr. Haas? 14 MR. HAAS: Yes. 15 CHAIRMAN JOHNSON: Okay. 16 MR. HAAS: I believe it is. My memory doesn't 17 serve me very well. 18 CHAIRMAN JOHNSON: Okay. It was approximately 19 2009? 20 MR. HAAS: Yeah. At that time we finished 21 that reclamation and moved our equipment over to a site 22 that's adjacent to this quarry to go ahead and get 23 access to the quarry. 24 I met with Dana Dean and some other people 25 from the Division and learned that Dana Dean served me</p> <p style="text-align: right;">Page 44</p>
<p>1 CHAIRMAN JOHNSON: First, let's see if Mr. 2 Haas has any questions for Mr. Baker regarding his 3 testimony. 4 MR. HAAS: I do not. 5 CHAIRMAN JOHNSON: Go ahead. Mr. Haas, do you 6 have any questions for Mr. Baker? 7 MR. HAAS: No, I do not. 8 CHAIRMAN JOHNSON: Okay. Does the board have 9 any questions for Mr. Baker? 10 THE BOARD: (No response.) 11 CHAIRMAN JOHNSON: Okay. So go ahead, then, 12 Ms. Lewis. 13 MS. LEWIS: At this point in time I would like 14 to conclude but preserve the opportunity to present 15 Mr. Kunzler as a rebuttal witness and also Mr. John 16 Blake from SITLA as a rebuttal witness, if need be. 17 CHAIRMAN JOHNSON: Okay. So you are finished 18 with your testimony. 19 MS. LEWIS: Yes. 20 CHAIRMAN JOHNSON: All right. Mr. Haas, let's 21 move to you then. Please go ahead. 22 MR. HAAS: The -- what -- what had happened is 23 in this instant was the economy was failing. I was 24 putting all of my resources towards getting these 25 properties reclaimed. I spoke with John Blake from</p> <p style="text-align: right;">Page 43</p>	<p>1 with the set of papers from SITLA saying that I could 2 not access the property in any way, shape, or form. It 3 prohibited from me going in and finishing the 4 reclamation. I was ready, my equipment was staged, I 5 was ready to do that. 6 They shut me out of the quarry. I haven't 7 been back on the quarry since. I haven't been allowed 8 back on the quarry. I don't have a preliminary amount 9 of acres. I haven't been onto the location at all, but 10 I posted a bond for the location. And I'm -- I'm kind 11 of confused here how I can be locked out of a quarry 12 that I posted a bond with the Division here to make my 13 rec- -- make my recommendations to them so I can stay on 14 what timeline and where and when and how this is going 15 to happen. 16 I -- I didn't have that opportunity. They 17 locked me out of it and basically said, "There." And so 18 I really haven't had due process in trying to reclaim 19 this site, yet they've given me several opportunities to 20 reclaim it. I was doing that as I could afford to do it 21 and, you know, I show up with my equipment staged and 22 everything else. I never got any formal letter from 23 SITLA. I got -- I got a hand -- a typed-up letter 24 saying they restricted me from the property and it was 25 delivered by Oil, Gas and Mining. And in my mind, Oil,</p> <p style="text-align: right;">Page 45</p>

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<p>1 Gas and Mining and SITLA are two different agencies, and 2 I don't know how Oil, Gas and Mining, can step in and 3 deliver papers for SITLA to keep me off a piece of 4 ground that needs to be reclaimed under the law. And 5 that confuses me. 6 So when they say I haven't made an avid 7 attempt, you can see here that I've made attempts and 8 you can see where I've run out of money, and where I 9 picked up with more money and went back in and did what 10 I could. I removed the structures. I've done 11 everything I said I would do but I was there ready to 12 make it happen and had equipment staged and they locked 13 me out of the quarry. And here we are today, fighting 14 about it when, you know, six months ago if they'd have 15 just left it be and let me go in here and finish it, we 16 wouldn't even be here today. 17 But they -- they literally locked me out of 18 the quarry and I haven't stepped foot back on that 19 quarry for an inspection of anything. Not only that but 20 SITLA sent me a letter saying that if I didn't forfeit 21 my water rights out of that well, that they were going 22 to sue me personally. Well, the well is theirs. It's 23 drilled on their property. They have -- they have 24 "added" value to their property. My water is my water. 25 I hold the certificate. And that's an unfair taking and</p> <p style="text-align: right;">Page 46</p>	<p>1 needed to be reclaimed, how many acres needed to be 2 reseeded. 3 I responded to Dana Dean and Lynn Kunzler and 4 I never got anything out of it other than, "We're going 5 to address that at a hearing." 6 Now, you know, I'm not a very bright 7 individual but you know what, when you have somebody 8 that's standing there ready to do the work and you tell 9 them they can't go in there and do the work, we got a 10 serious problem on our hands because -- yeah, they've 11 been patient, don't get me wrong, but you know what, 12 that's like raising a racehorse, and prime racehorse and 13 going out on race day and breaking his front legs out 14 from underneath him and saying, "We're done with this. 15 We're done with you and our investment, we just want to 16 wash it and be done." How much sense does that make? 17 CHAIRMAN JOHNSON: Okay. Mr. Haas, do you 18 have a copy of the letter regarding the well that you 19 said you received. 20 MR. HAAS: I don't with me. 21 CHAIRMAN JOHNSON: Okay. Okay. Ms. Lewis, do 22 you have any questions for Mr. Haas? 23 MS. LEWIS: I don't have any -- I just would 24 like to remind the board about the scope of the hearing, 25 which is limited to our contribution version to those</p> <p style="text-align: right;">Page 48</p>
<p>1 I think that it can be fought and won because there 2 isn't anybody in the world that's going to give up 15, 3 \$20,000 worth of water shares just because somebody 4 tells me you have to. 5 And if -- if the site is, indeed, going to be 6 reclaimed, why would they send me a letter and say, "We 7 want your water rights," when what -- what their ability 8 is and what their -- their gripe is is to get the site 9 reclaimed? But how can I reclaim the site if they don't 10 allow me access to it and I posted the bond and you've 11 seen what I've posted to go in there and get it 12 reclaimed. 13 I mean, I -- I'm confused between the 14 agencies. Either one agency stands over here on the 15 right and one stands over here on the left. There's no 16 gray area and what I have here is a whole bunch of gray 17 area because I was more than willing to go in there and 18 get it done when Dana Dean served me the papers and 19 said, "This is from SITLA and you're not out -- you're 20 not able to even go in and inspect the property." I 21 said, "I want to make an inspection today." They 22 wouldn't let me inspect the property. Nor would they 23 accompany me to inspect the property. I asked five 24 times to get inspections made to the property to know 25 exactly how many acres were undisturbed, how many acres</p> <p style="text-align: right;">Page 47</p>	<p>1 three requests, the noticed agency action, and then I 2 don't have any direct questions for Mr. Haas but would 3 like to refer to Mr. John Blake of SITLA to discuss and 4 cover the access. 5 CHAIRMAN JOHNSON: Okay. Let's wait just a 6 minute on that. Does the board have any questions for 7 Mr. Haas? 8 MR. HAROUNY: I do. 9 CHAIRMAN JOHNSON: Mr. Harouny. 10 MR. HAROUNY: Mr. Haas, you drilled a water 11 well, correct? 12 MR. HAAS: I did. 13 MR. HAROUNY: And you do know the water is 14 appropriated to you, correct? 15 MR. HAAS: Correct. 16 MR. HAROUNY: For a certain purpose. What was 17 the purpose of that appropriation? 18 MR. HAAS: To operate a saw shop. 19 MR. HAROUNY: So you do realize when you don't 20 have that purpose that you cannot carry the water rights 21 for any other purpose, it has to be reappropriated, 22 correct? 23 MR. HAAS: I understand that but, also, I 24 don't have to forfeit my water rights. You know, I can 25 go anywhere in that drainage and reappropriate my water</p> <p style="text-align: right;">Page 49</p>

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<p>1 right. That doesn't mean that I have to forfeit my 2 water right because it's attached to that well. And 3 when that well gets reclaimed, the water goes away. 4 When it's filled in, I can use that water and any other 5 appropriation in that drainage. It's not tied directly 6 to that well and it hasn't been since 2002, 2003. 7 MR. HAROUNY: But it's tied to that purpose, 8 correct? 9 MR. HAAS: Yes. 10 MR. HAROUNY: Okay. I just wanted to make 11 sure you know that. 12 CHAIRMAN JOHNSON: Mr. Payne? Does -- okay. 13 Does the board have any other questions? 14 MR. JENSEN: Just to -- just to make it clear. 15 This board doesn't have any jurisdiction over water 16 rights. And we're not going to make any decisions about 17 water rights. Understood? 18 MR. HAAS: That's clear. Thank you. 19 MR. JENSEN: Okay. 20 CHAIRMAN JOHNSON: Okay. Ms. Lewis, you 21 indicated you have some rebuttal testimony you would 22 like to put on. 23 MS. LEWIS: Yeah. I would just like to refer 24 to -- I'd like to have sworn in, at this time, Mr. John 25 Blake, to respond to Mr. Haas's testimony.</p> <p style="text-align: right;">Page 50</p>	<p>1 the present time to enter that land to perform any work. 2 In other words, he cannot -- he doesn't have any 3 contract or -- or right of entry to take equipment on 4 there to disturb the land. 5 CHAIRMAN JOHNSON: Mr. Blake, are you talking 6 about for mining purposes? 7 MR. BLAKE: For mining or reclamation -- 8 CHAIRMAN JOHNSON: For reclamation. 9 MR. BLAKE: -- or any other purposes. 10 MS. LEWIS: Mr. Blake, could you please 11 explain to the board the series of leases that were 12 entered and the special agreements so they can 13 understand the relationship between the two? 14 MR. BLAKE: Yeah. SITLA has entered a number 15 of leases, successive leases with Mr. Haas on this 16 particular property, as one lease would cancel or 17 expire, we would issue another one to him. And we, in 18 fact, have issued two leases successfully, specifically, 19 for the purpose of going onto that property and 20 completing reclamation work. In each case he failed to 21 live up to the terms of that agreement. He failed to 22 reclaim the property. 23 On a couple of other occasions we've given him 24 noncontractual permissions to enter the property at his 25 own risk and to go in there and perform the reclamation</p> <p style="text-align: right;">Page 52</p>
<p>1 CHAIRMAN JOHNSON: Mr. Blake, can you be 2 sworn, please? 3 JOHN BLAKE, 4 called as a witness on behalf of the Division, being 5 duly sworn, was examined and testified as follows: 6 MR. BLAKE: Yes. 7 THE REPORTER: Thank you. 8 MS. LEWIS: Mr. Blake, for the board, would 9 you please state your name and position and your 10 relationship to this matter? 11 MR. BLAKE: My name is John Blake. I'm 12 employed by the School and Institutional Trust Lands 13 Administration in their minerals program, and part of my 14 responsibilities are to administer the mineral leases 15 under which Mr. Haas was operating on these lands. 16 MS. LEWIS: I believe the board has it before 17 it, Rebuttal Exhibit A. 18 Could you please just explain to the board in 19 response to Mr. Haas's testimony the timeline and the 20 various lease agreements entered in between SITLA and 21 the Respondent? 22 MR. BLAKE: Yes, first of all, I would not 23 characterize it -- Mr. Dean, that Mr. Haas is not 24 permitted on the land. The situation that exists is 25 that he has no contract, no right of entry from SITLA at</p> <p style="text-align: right;">Page 51</p>	<p>1 work. And during those time extensions that were given, 2 he again failed to perform the work. So at the time 3 that Mr. Haas is talking about that he has equipment 4 there and ready to go, he had no agreements with us at 5 that time to enter the land and we were not about to 6 enter any other agreements with him because in all the 7 previous agreements we had entered, he had failed to 8 live up to his commitments. 9 So we decided that it was time to ask for the 10 loan be forfeited and go in and perform the reclamation 11 work ourselves. 12 MR. JENSEN: May I ask a question, 13 Mr. Chairman? 14 Mr. Blake, from the original request for -- or 15 notice of agency action, there's a reference to SITLA 16 extending mineral lease 51303 on June 8, 2009, for an 17 additional 45 days. From -- from the -- from this 18 request it appears that that's the last written 19 authorization that Mr. Haas would have had to access the 20 property? 21 MR. BLAKE: That is correct. 22 MR. JENSEN: And -- and is it your testimony 23 that there were subsequent oral agreements to access the 24 property? 25 MR. BLAKE: Not after that date.</p> <p style="text-align: right;">Page 53</p>

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<p>1 MR. JENSEN: So this -- 45 days from this date 2 it's over. 3 MR. BLAKE: That's right. 4 MR. JENSEN: Thank you. 5 CHAIRMAN JOHNSON: Go ahead, Ms. Lewis. 6 MS. LEWIS: I would just like to note there 7 may be a date discrepancy between the -- the PowerPoint 8 and Mr.-- Mr. Blake's testimony. Mr. Blake is the 9 expert on the dates. 10 CHAIRMAN JOHNSON: I think we're at the point, 11 Mr. Blake, you were going to describe this rebuttal 12 Exhibit A, which is the -- the chronology. 13 MR. BLAKE: Yes. I prepared this chronology, 14 which I would like to submit as an exhibit. 15 CHAIRMAN JOHNSON: It's been submitted. So go 16 ahead. 17 MR. BLAKE: It gives dates and each of the 18 leases. 19 CHAIRMAN JOHNSON: Was this chronology 20 prepared by you? 21 MR. BLAKE: It was. 22 CHAIRMAN JOHNSON: Okay. Tell us what's in 23 it. 24 MR. BLAKE: Pardon me? 25 CHAIRMAN JOHNSON: Please tell us what's in</p> <p style="text-align: right;">Page 54</p>	<p>1 established that this was -- this chronology was 2 prepared by you. Rather than marching through every 3 line item in it, would you please try to focus on those 4 items that deal with rebutting the -- the descriptions 5 given by Mr. Haas? 6 MS. LEWIS: Can I request just a moment to 7 speak with my clients? 8 CHAIRMAN JOHNSON: Yes. 9 MR. BLAKE: When B&H Stone went into 10 bankruptcy a few years ago he was operating under one 11 lease, successive leases, which was ML48949. Since B&H 12 Stone was no longer an entity that lease had no validity 13 anymore and at that time Mr. Haas told us that he had 14 decided he was going to go reclaim the Fayette Quarry. 15 We issued him a one-year lease, ML50575, 16 exclusively for the purpose of reclaiming that property 17 within that one year. 18 CHAIRMAN JOHNSON: So that lease was only to 19 perform reclamation work, not to extract stone; is that 20 what you're saying? 21 MR. BLAKE: I'm sorry. I have trouble 22 hearing. 23 CHAIRMAN JOHNSON: Okay. So was your 24 testimony that ML50575 was issued only for the purpose 25 of Mr. Haas performing reclamation work --</p> <p style="text-align: right;">Page 56</p>
<p>1 it. 2 MR. BLAKE: Would you like to go through each 3 item? 4 CHAIRMAN JOHNSON: However you think you need 5 to explain it to the board and to Mr. Haas. 6 MR. BLAKE: June 16th, 1999, the agency 7 entered a lease, No. ML48313 covering 80 acres of land. 8 This 80 acres of land was the -- included the 9 southwest -- southwest border, section 32, township 18 10 south, range 1 east. We issued this permit to Mr. Haas 11 for the purpose of opening up a limestone quarry. 12 On April 26th, 2000, this permit was amended. 13 It was originally issued as a one-year term. We amended 14 it to have a term of three years and we also adjusted 15 the royalty rate at that time for him. 16 March 3rd, 2001, we found it necessary to 17 amend this contract because Mr. Haas had trespassed on 18 some adjacent acreage on trust land. So we amended the 19 contract. 20 CHAIRMAN JOHNSON: Mr. Blake, let me interrupt 21 you just a minute, please. This -- this exhibit has 22 been entered as rebuttal to the testimony or -- excuse 23 me, it wasn't testimony, it was -- the description 24 offered by Mr. Haas. Okay. 25 So this is a rebuttal exhibit. You've</p> <p style="text-align: right;">Page 55</p>	<p>1 MR. BLAKE: That is correct. 2 CHAIRMAN JOHNSON: -- not for -- not for 3 extracting stone. 4 MR. BLAKE: That is correct. 5 CHAIRMAN JOHNSON: Okay. Thank you. 6 MR. PAYNE: And could you clarify for me, 7 the -- you just used the term "Fayette Quarry," was the 8 first time we've heard that. Is that the name of this 9 quarry that's at issue -- 10 MR. BLAKE: The name of the quarry is B&C. 11 MR. PAYNE: Okay. So -- 12 MR. BLAKE: The name of the company is B&H. 13 MR. PAYNE: Okay. So Fayette Quarry, tell us 14 what that means. 15 MR. BLAKE: The Fayette Quarry is the B&C 16 Quarry. 17 CHAIRMAN JOHNSON: It's located near the town 18 of Fayette, correct? 19 MR. BLAKE: It's near the town of Fayette. 20 CHAIRMAN JOHNSON: Okay. 21 MR. BLAKE: This lease expired after the 22 period of one year. The reclamation was not completed. 23 We wrote Mr. Haas a letter instructing him to remove his 24 equipment from the property by no later than 25 February 29th, 2008.</p> <p style="text-align: right;">Page 57</p>

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<p>1 Mr. Haas called me and asked for an extension 2 of time in order to remove his equipment and complete 3 the reclamation. I wrote him back a letter, this was on 4 February 7th. I wrote him back a letter, told him I 5 would give him till May 31st, 2008, to enter the 6 property at his own risk, he had no contract with us at 7 that time, but to enter the property at his own risk to 8 perform the work.</p> <p>9 We subsequently had a meeting out on the site 10 and -- to talk about what reclamation work he was going 11 to do and what needed to be completed during this 12 period. During that conversation I agreed that SITLA 13 would issue him a new one-year permit. This permit was 14 approved April 11th, 2008, ML51303. Again, this permit 15 was explicitly for the purpose of going on the property 16 and reclaiming the property during that one-year period.</p> <p>17 Mr. Haas failed to reclaim the property during 18 that year. At the expiration of that permit I had a 19 call from Mr. Kunzler. He advised me that he had been 20 in conversation with Mr. Haas, that Mr. Haas had had 21 equipment problems, and that's why he hadn't completed 22 the reclamation. So I said, "Well" -- I asked the 23 director of SITLA to give him another 30 days' extension 24 to complete the work. The director approved that 25 action. And so the work was to be completed then by the</p> <p style="text-align: right;">Page 58</p>	<p>1 MS. LEWIS: I don't have any questions for 2 Mr. Haas or for Mr. Blake. Just to note, though, 3 Chairman, you mentioned -- or you noted that Mr. Haas 4 has not been sworn. So those statements aren't 5 testimony. Is that something that you would like to do?</p> <p>6 CHAIRMAN JOHNSON: You tell me.</p> <p>7 MS. LEWIS: I -- Mr. Haas, would you like your 8 record -- your statements to be on the record?</p> <p>9 MR. HAAS: Yes.</p> <p>10 MS. LEWIS: We probably should have him sworn 11 in, please.</p> <p>12 MR. HAAS: Well, it's a little late for the 13 statements I already made.</p> <p>14 CHAIRMAN JOHNSON: Let's wait. Let's wait 15 till we --</p> <p>16 MS. LEWIS: We can affirm what he said was 17 true.</p> <p>18 CHAIRMAN JOHNSON: Mr. Haas.</p> <p>19 MR. HAAS: So we are going to confirm that 20 they are true.</p> <p>21 MS. LEWIS: No, no, no.</p> <p>22 CHAIRMAN JOHNSON: No.</p> <p>23 MS. LEWIS: We're -- basically, since you 24 weren't sworn in, originally your statements aren't on 25 the record yet so we'd like you to affirm your</p> <p style="text-align: right;">Page 60</p>
<p>1 end of May 2009.</p> <p>2 On June 1st, 2009, I went out to the site, no 3 work had been done to complete the reclamation.</p> <p>4 Mr. Haas called me shortly thereafter, said that -- this 5 is the point, I believe, which he was reclaiming the 6 Gunnison Quarry, which is the other quarry that he had 7 been working in. He said that he was reclaiming that 8 quarry and he would come over after he'd finish that 9 work and reclaim the Fayette Quarry.</p> <p>10 And so I asked the director to give him a 11 45-day extension to do that. The director granted that 12 extension. This is on June 8th, 2009.</p> <p>13 On August 12th, 2009, I inspected the site, 14 found that the work had not been completed. And at that 15 point in time, we decided that it was necessary to ask 16 to forfeit the bond and to have ourselves perform the 17 reclamation work using that bond money.</p> <p>18 So there have been several opportunities for 19 Mr. Haas to go in there and complete that reclamation 20 work, both under contract and without contract. And in 21 each instance -- each instance he failed to complete the 22 reclamation work.</p> <p>23 Are there any other questions?</p> <p>24 CHAIRMAN JOHNSON: Ms. Lewis, do you have any 25 questions?</p> <p style="text-align: right;">Page 59</p>	<p>1 statements you made earlier and swear in so that they 2 are on the record.</p> <p>3 MR. HAAS: Okay.</p> <p>4 MR. PAYNE: Could we -- could we finish with 5 this witness?</p> <p>6 CHAIRMAN JOHNSON: Yes. We'll get to Mr. Haas 7 in a minute, Ms. Lewis.</p> <p>8 Do you have any -- do you have any other 9 questions for Mr. Blake?</p> <p>10 MS. LEWIS: I have no more questions for 11 Mr. Blake.</p> <p>12 CHAIRMAN JOHNSON: Okay. And do you want to 13 move that this Rebuttal Exhibit A be entered?</p> <p>14 MS. LEWIS: Yes. I'd like to move for 15 Rebuttal Exhibit A to be entered.</p> <p>16 CHAIRMAN JOHNSON: Okay. Mr. Haas, again, 17 this -- this is a chronology prepared by Mr. Blake. If 18 you've got disagreement with any of the facts in it, 19 you'll be given an opportunity to tell the board what 20 those disagreements are, but do you have any objection 21 to this document being entered as Mr. Blake's 22 chronology?</p> <p>23 MR. HAAS: Yes.</p> <p>24 CHAIRMAN JOHNSON: Okay. And what are those 25 objections?</p> <p style="text-align: right;">Page 61</p>

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<p>1 MR. HAAS: Well. Okay. I'm not here -- I'm 2 not here to regrind the axe. I want to get this over 3 with. Let it enter. I mean -- 4 CHAIRMAN JOHNSON: Okay. 5 MR. HAAS: -- it's not -- it's not all 6 complete there but, you know -- 7 CHAIRMAN JOHNSON: Okay. 8 MR. HAAS: -- let's get to the end of this 9 mission. 10 CHAIRMAN JOHNSON: We'll give you an 11 opportunity to go through that. 12 Does the board have any objections to Rebuttal 13 Exhibit A? 14 Okay. So that -- that is entered. 15 (Division Exhibit Rebuttal A was received into 16 evidence.) 17 CHAIRMAN JOHNSON: Okay. Mr. Haas, do you 18 have any questions for Mr. Blake? 19 MR. HAAS: Yes, I do. 20 CHAIRMAN JOHNSON: Go ahead. 21 MR. HAAS: When I spoke to you on the phone 22 when I had my equipment staged and everything else, we 23 got into a conflict about the rock that was set down in 24 the pasture, and you said to me that you were not going 25 to allow me to enter the property and that was that.</p> <p style="text-align: right;">Page 62</p>	<p>1 the stone as long as the reclamation was done. 2 MR. BLAKE: We talked about that, yes. 3 MR. HAAS: You agreed to that? 4 MR. BLAKE: I don't know there was any 5 agreement. We talked about it. 6 MR. HAAS: Oh. Okay. But in that agreement 7 you're -- you're backpedaling here because you said just 8 a minute ago, "I agreed to let you take the stone when 9 the reclamation was complete," did you agree to that? 10 MR. BLAKE: Yes, I did. 11 MR. HAAS: Okay. Then, three days later -- 12 MR. BLAKE: But you -- 13 MR. HAAS: Three days later you sent out -- 14 you didn't send me a certified letter, your agency 15 didn't send me a certified letter, you agreed to let me 16 enter the property and three days later you changed your 17 mind, you didn't give me my responsibilities in writing 18 of what you wanted me to do or anything else. You put 19 it in another agency's hands and with your attorney's 20 signature on it, said that you were going to forfeit my 21 water rights, take my water rights, and sue me, and I 22 could not no longer enter the property; is that not 23 correct? 24 The paper -- now, remember, before you say, 25 the paper tells the truth so remember that. And I've</p> <p style="text-align: right;">Page 64</p>
<p>1 The following week you came out -- or you 2 didn't come out, you sent a letter out from SITLA that 3 was delivered by Dana Dean to me on another location 4 saying that I couldn't enter that property. Is that not 5 correct? 6 MR. BLAKE: That's correct. 7 MR. HAAS: So -- so in essence what you're 8 telling me is is, you know, what we agreed on the phone 9 and what you agreed on after we got off the phone was 10 two different things. 11 MR. BLAKE: I'm sorry. I don't understand 12 that. 13 MR. HAAS: You agreed to let me enter the 14 property at my own risk to finish the reclamation and 15 then two days later Dana Dean came out with a letter 16 from you and your attorneys saying that I could no 17 longer enter the property; is that correct? 18 MR. BLAKE: Okay. When you talked to me on 19 the phone about removing the stone, I said you cannot 20 remove that stone until the reclamation was complete. 21 MR. HAAS: Complete, yes. And I understand 22 that. That's not -- that's not my -- that's not my -- 23 that's not my concern. What my concern is is we talked 24 about going in there and having that reclaimed and you 25 agreed to let me do that and you agreed to let me take</p> <p style="text-align: right;">Page 63</p>	<p>1 got the paper. 2 MR. BLAKE: I don't know what paper you're 3 looking at. But when we talked on the phone and we 4 talked about you going in and reclaiming the property 5 and then being able to take the stone, you expressed to 6 me at that time that you were not going to reclaim the 7 property just so you could take the stone. So we had no 8 agreement about you doing anything there. 9 Subsequently, when I talked to our attorney 10 about it, he advised me that we should not allow you to 11 enter the property anymore and we should take action 12 against the bond. 13 MR. HAAS: You just stated that you gave me 14 permission to enter the property. You just stated that. 15 MR. BLAKE: But you didn't accept that 16 opportunity. You injected that opportunity. 17 MR. HAAS: Okay. Why would I reject that 18 opportunity when my equipment was staged less than a 19 mile away? 20 MR. BLAKE: I don't know where your equipment 21 was. 22 MR. HAAS: Uh-huh. 23 MR. BLAKE: You never told me you had any 24 equipment there. 25 MR. HAAS: Okay. Okay, John. But you --</p> <p style="text-align: right;">Page 65</p>

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<p>1 you -- you are saying that the opportunity was there for 2 me to enter the property, yes or no? 3 MR. BLAKE: What I'm saying, at the time we 4 had that discussion, I was willing to talk to you about 5 another opportunity to go in and reclaim the land. And 6 I had some conditions on it. 7 MR. HAAS: You did. And what were the 8 conditions? 9 CHAIRMAN JOHNSON: Hold on. It seems to me 10 that this really isn't getting anywhere. 11 MR. HAAS: The conditions were that you were 12 going to let me finish the reclamation -- 13 CHAIRMAN JOHNSON: Mr. Haas -- Mr. Haas. 14 MR. JENSEN: Mr. Haas. 15 CHAIRMAN JOHNSON: Mr. Haas, hold on just a 16 second. 17 MR. JENSEN: It seems to me that we've 18 heard -- we've heard what Mr. Haas' position is about 19 you thought you had an oral understanding to be able to 20 go on the property and reclaim that, that's your 21 position. And then two or three days later you get a 22 written letter delivered from -- SITLA letter delivered 23 by the Division saying that you weren't authorized to go 24 on the property. That's the essence of what you said, 25 isn't it?</p> <p style="text-align: right;">Page 66</p>	<p>1 June 8th, 2009, the director gave a 45-day extension. 2 MR. PAYNE: Oh, correct. Correct. 3 MR. BLAKE: August 12th, I went to the 4 property and found out that the work had not been 5 completed during the 45-day extension period. 6 MR. PAYNE: Okay. 7 MR. BLAKE: The next contact I had with 8 Mr. Haas is when we were just talking a moment ago when 9 we had called me. 10 MR. PAYNE: So that was -- that was my 11 question. So the only other contacts or requests to 12 access the property was this phone call on May 6th, 13 2010? 14 MR. BLAKE: Yes. 15 MR. PAYNE: So between the next period of that 16 period in -- tell me when that would have expired. So 17 June 8th, 2009, plus 45 days puts us somewhere the end 18 of July 2009. 19 MR. BLAKE: There were no discussions during 20 that period. 21 MR. PAYNE: So after July of 2009 there wasn't 22 conversations till May of 2010 and that's been the only 23 request for access to the site and there was initially a 24 request to remove stone. 25 MR. BLAKE: Yes.</p> <p style="text-align: right;">Page 68</p>
<p>1 MR. HAAS: (Nods head.) 2 MR. JENSEN: Okay. We understand. 3 CHAIRMAN JOHNSON: Just for the record, Mr. 4 Haas, you agreed with what Mr. Jensen said? 5 MR. HAAS: Yes. 6 CHAIRMAN JOHNSON: Okay. Thank you. Okay. 7 Do you have any other questions for Mr. Blake? 8 MR. HAAS: Not that I'm going to get anywhere 9 with today. I can obviously tell that. 10 CHAIRMAN JOHNSON: Okay. Does the board have 11 any questions for Mr. Blake? 12 MR. PAYNE: I do. 13 CHAIRMAN JOHNSON: Mr. Payne. 14 MR. PAYNE: I'd just like to clarify these 15 timelines. So the last time, Mr. Blake, that SITLA gave 16 formal permission to Mr. Haas was August 20th and they 17 gave him 45 days, putting that sometime in early October 18 the expiration of that period; is that correct? 19 MR. BLAKE: The last permission that had been 20 approved by the director for him to enter that property 21 and perform the work was the 45-day extension. 22 MR. PAYNE: Starting August 20th. 23 MR. QUIGLEY: Twelve. 24 MR. PAYNE: August 20, 2009. 25 MR. BLAKE: No. I believe that was back on</p> <p style="text-align: right;">Page 67</p>	<p>1 MR. PAYNE: Not a request to -- I'm referring 2 to my notes here. 3 MR. BLAKE: His request was to remove stone, 4 not to reclaim the property. 5 MR. PAYNE: Not to reclaim the property. And 6 then there's been no subsequent request to access the 7 property for reclamation after May of 2010? 8 MR. BLAKE: That's right. 9 MR. PAYNE: Thank you. 10 CHAIRMAN JOHNSON: Mr. Blake, the stone that 11 you're talking about that Mr. Haas asked to remove, was 12 that to process stone? 13 MR. BLAKE: Yes, it was. 14 CHAIRMAN JOHNSON: He had mined and sawed it 15 so it could be sold? 16 MR. BLAKE: Yes. You've seen some of the 17 pictures there. 18 CHAIRMAN JOHNSON: Okay. And -- 19 MR. BLAKE: It was processed stone that's 20 still on the property. 21 CHAIRMAN JOHNSON: It's still on the property 22 now. But in order to properly reclaim this site, will 23 that stone have to be removed? 24 MR. BLAKE: It will have to be removed and 25 stored somewhere, yes.</p> <p style="text-align: right;">Page 69</p>

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<p>1 CHAIRMAN JOHNSON: Okay. And was that stone 2 legally mined by Mr. Haas under the terms of his permit? 3 MR. BLAKE: Yes, it was. 4 CHAIRMAN JOHNSON: Or lease? 5 MR. BLAKE: But it was abandoned on the 6 property after the leases had expired. 7 CHAIRMAN JOHNSON: Okay. I'm not sure how you 8 mean "abandoned." Because Mr. Haas says he would like 9 to -- to have the stone. 10 MR. BLAKE: After the leases have expired, a 11 person has so many days to go in and move their personal 12 property. 13 CHAIRMAN JOHNSON: Okay. That's what you mean 14 by abandoned. 15 MR. BLAKE: From the land, yes. 16 CHAIRMAN JOHNSON: Okay. And you're saying 17 that that -- that time period has expired? 18 MR. BLAKE: Yes. 19 CHAIRMAN JOHNSON: Okay. All right. 20 Mr. Harouny? 21 MR. HAROUNY: The first and the second lease 22 extension that was given to Mr. Haas, the ML51351 -- 23 51303, MP, what is the designation for MP? Is that a 24 specific lease, a different -- 25 MR. BLAKE: That designation is for a</p> <p style="text-align: right;">Page 70</p>	<p>1 was -- so you basically gave him a one-year entry permit 2 and all the provisions of the original lease are still 3 intact, correct? 4 MR. BLAKE: Well, his -- his rights under the 5 original lease had expired. 6 MR. HAROUNY: His obligations. 7 MR. BLAKE: His obligations were still intact. 8 MR. HAROUNY: Okay. One more question for 9 you. 10 MR. HAAS: I think we can argue that's an 11 unfair taking. 12 MR. HAROUNY: Under that -- that permit, the 13 first -- you had two separate leases or permits given to 14 Mr. Haas, correct? 15 MR. BLAKE: Yes. The first one was ML50575, 16 that was back in 2000 -- back in December 15th, 2006. 17 That was approved for issuance, that was an effective 18 day of January 1st, 2007. And that was a one-year 19 permit and, actually, that was a lease. And it was for 20 the purpose of going in and doing reclamation work. 21 There's a specific provision in that lease 22 that explicitly says it was issued for the purpose of 23 reclamation. 24 MR. HAROUNY: Okay. Was the first permit 25 coincidental with the reclamation work that Mr. Haas had</p> <p style="text-align: right;">Page 72</p>
<p>1 materials permit. 2 MR. HAROUNY: Okay. 3 MR. BLAKE: That was not actually a lease. It 4 was a mineral materials permit. 5 MR. HAROUNY: What does that entail and 6 what -- 7 MR. BLAKE: There's just -- there's just a 8 distinction there in that a mineral materials permit is 9 given for a -- generally issued for a shorter period of 10 time. It can be canceled at any time by the director at 11 his option. It does not give all the rights that a 12 lease would give. 13 MR. HAROUNY: But does it also transfer all 14 the abandonment obligations from the original lease? 15 MR. BLAKE: Well, those obligations still 16 exist from the original lease. 17 MR. HAROUNY: So the ML51303 does not 18 supersede the original lease? 19 MR. BLAKE: No. It's -- it was just another 20 opportunity to -- to grant him a right of entry to go on 21 the property and operate. 22 MR. HAROUNY: So it's basically an entry 23 permit. 24 MR. BLAKE: That's right. 25 MR. HAROUNY: As part of this entry permit,</p> <p style="text-align: right;">Page 71</p>	<p>1 done on part of the property? 2 MR. BLAKE: The reclamation they did on part 3 of the property was done under the previous lease, 4 ML48949. 5 MR. HAROUNY: So that's under the original 6 lease, correct? 7 MR. BLAKE: Yes. 8 MR. HAROUNY: So the -- the first permit was 9 given after the reclamation was done? 10 MR. BLAKE: That's right. 11 MR. HAROUNY: So we're specifically talking 12 to -- as to the disturbed area that is not reclaimed, 13 the area that was read in the exhibit? 14 MR. BLAKE: That's right. 15 MR. HAROUNY: But -- 16 MR. BLAKE: Under these -- excuse me. Under 17 these subsequent lease -- reclamation leases that were 18 given, he did go in and remove some of his equipment 19 down by the pad, but there was very little regrading 20 work done. 21 MR. HAROUNY: Okay. But the building and 22 everything else was part of the blue area, correct, 23 under the original lease? 24 MR. BLAKE: Yes. 25 MR. HAROUNY: So you mentioned that back in</p> <p style="text-align: right;">Page 73</p>

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<p>1 2009, and that's after the permit was -- the first 2 permit was issued, that he had done some work but it was 3 done in an area that was already reclaimed or considered 4 to be reclaimed? 5 MR. BLAKE: Well, he continued to go in and 6 take equipment out over the years. Under these 7 subsequent leases he continued to go in and take 8 equipment out. 9 MR. HAROUNY: What I'm trying to get at is the 10 statement that was made that no reclamation efforts were 11 done, you know, and I went through your -- 12 MR. BLAKE: There was not anything that I 13 could determine that was substantial in the way of any 14 regrading work or other types of reclamation work that 15 had been done under any of these subsequent reclamation 16 leases. 17 MR. HAROUNY: But the area was -- someplace on 18 that lease the entire disturbed area, call it area A, 19 area B, something was removed, something was cleaned up, 20 correct? 21 MR. BLAKE: Yes. 22 MR. HAROUNY: After that first extension you 23 gave him? 24 MR. BLAKE: Yes. 25 MR. HAROUNY: Okay. That's what I'm trying to</p> <p style="text-align: right;">Page 74</p>	<p>1 MR. GILL: Yes, sir. You're aware that even 2 if you denied him permission to have access to the land 3 for whatever reason, that the Division and the board 4 can, through statutory authority, require them to handle 5 the land reclamation, which would override whatever you 6 do? 7 MR. BLAKE: I'm not aware of the law on that 8 but I'll accept that. 9 MR. GILL: Thank you. 10 CHAIRMAN JOHNSON: Mr. Payne, did you have a 11 question? 12 MR. PAYNE: I'd like to direct a question to 13 Mr. Kunzler. 14 CHAIRMAN JOHNSON: Go ahead. Mr. Kunzler, he 15 has a question for you. 16 MR. PAYNE: Mr. Kunzler, tell me one -- if I 17 can go back to your summary. I want to make sure I'm 18 understanding this. When was the last substantial 19 reclamation work done on this property? Can you tell me 20 from your notes? 21 MR. KUNZLER: It would have been approximately 22 between June and July of 2009. There had been a little 23 bit of regrading work that had taken place. 24 MR. PAYNE: So he was effectively doing 25 reclamation work up through the time period when he was</p> <p style="text-align: right;">Page 76</p>
<p>1 get at. 2 CHAIRMAN JOHNSON: Mr. Quigley. 3 MR. QUIGLEY: Mr. Blake, when you answered 4 Mr. Harouny's question with respect to ML51303MP, you 5 said that was a special lease to -- at least I 6 understood you to say, that was a special lease that 7 gave him an extension of the right to operate and it was 8 my understanding in your testimony earlier that that was 9 a special lease that gave him the rights to reclaim 10 only. 11 MR. BLAKE: Those permits -- leases were 12 issued for the purpose of reclamation. 13 MR. QUIGLEY: That was my -- 14 MR. BLAKE: Now, they do not state in the 15 lease that he cannot operate. In other words, 16 they're -- they're on a regular lease or permit form. 17 But there's a special stipulation in there saying that 18 it was issued for the purpose of reclamation. 19 MR. QUIGLEY: Okay. But he could have 20 operated under that lease? He could have operated the 21 quarry? 22 MR. BLAKE: Yes. 23 MR. QUIGLEY: Okay. 24 MR. GILL: I have a question. 25 CHAIRMAN JOHNSON: Mr. Gill.</p> <p style="text-align: right;">Page 75</p>	<p>1 told he could no longer access the property, he was 2 doing something? 3 MR. KUNZLER: I'm not sure exactly when -- 4 MR. PAYNE: Well, so earlier Mr. Blake had 5 noted that there was a June 8th, 2009, giving him a 6 45-day extension. So that puts it at the end of July 7 but you're saying up through June there had been 8 reclamation work -- 9 MR. KUNZLER: There had been some -- 10 MR. PAYNE: -- done on the property. 11 MR. KUNZLER: There had been a little bit done 12 after that June 8th inspection? 13 MR. PAYNE: But there was progress up -- 14 essentially up until the time he was no longer -- 15 THE WITNESS: Very little. Very little -- 16 MR. PAYNE: -- allowed on the property. 17 MR. KUNZLER: -- progress. 18 MR. PAYNE: Okay. I asked you when the last 19 substantial reclamation was on the property and what 20 satisfactory progress -- 21 MR. KUNZLER: I guess I'm confused what you're 22 considering a substantial reclamation. 23 MR. PAYNE: When was the last time you would 24 have thought he was making satisfactory progress on 25 reclamation?</p> <p style="text-align: right;">Page 77</p>

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<p>1 MR. HAAS: Remember you're a boy scout when 2 you answer this. 3 MR. PAYNE: Please, sir. 4 MR. KUNZLER: I'm trying to think back -- 5 MR. HAAS: Because, what, I got the date right 6 here. 7 MR. PAYNE: I mean, come on, Mr. Haas. 8 CHAIRMAN JOHNSON: Mr. Kunzler, can you answer 9 the question, please? 10 MR. KUNZLER: Yeah, I'm just trying to -- 11 re- -- recall in my mind when I would have considered 12 that the last substantial amount of reclamation would 13 have been done. Probably when he had razed the shop 14 buildings and had them removed. Other than that, as I 15 say, there had been a little bit of regrading work that 16 had taken place in June of 2009. 17 MR. PAYNE: So that shop razing, I'm looking 18 at your notes here, and correct me if I'm wrong, that 19 you got an inspection report dated May 9th, 2008, saying 20 the office had been razed. 21 MR. KUNZLER: Yes. 22 MR. PAYNE: So up to 2008 there was bits and 23 starts, perhaps, but there was work being done? 24 MR. KUNZLER: Yes. There had been some work 25 here and there but --</p> <p style="text-align: right;">Page 78</p>	<p>1 MS. LEWIS: No. That concludes for us. 2 CHAIRMAN JOHNSON: Mr. Haas, is there anything 3 you would like to discuss regarding rebuttal testimony 4 of Mr. Kunzler? 5 MR. JENSEN: Mr. Chairman, before you ask that 6 I think we should follow up on the Division's suggestion 7 to have Mr. Haas sworn and then to reaffirm -- 8 CHAIRMAN JOHNSON: Okay. 9 MR. JENSEN: -- that his prior statements so 10 that the testimony portion of those statements can be 11 treated as evidence and then in addition whatever he 12 might have to say. 13 CHAIRMAN JOHNSON: Okay. Let's get into that 14 in just -- let's take about a five or ten-minute break 15 and then, Mr. Haas, we'll get into that, okay? 16 MR. HAAS: Well, I'm going to have to be on a 17 plane here in 25 minutes. So I -- if you'll take that 18 into consideration, I would be gracious for that. 19 CHAIRMAN JOHNSON: How long do you need? 20 MR. HAROUNY: Five minutes. 21 CHAIRMAN JOHNSON: Let's take just a quick 22 five-minute break. If you don't need to leave the room, 23 please don't leave the room. Okay? 24 (Recess taken.) 25 CHAIRMAN JOHNSON: All right. Let's go back</p> <p style="text-align: right;">Page 80</p>
<p>1 CHAIRMAN JOHNSON: Ms. Lewis, are you finished 2 with your rebuttal testimony? 3 MS. LEWIS: We just have one point of 4 clarification that I'd like to direct to Mr. Baker and 5 that just regards the delivery of the letter. 6 MR. BAKER: The -- the letter that we were 7 talking about earlier where SITLA told Mr. Haas that he 8 could not enter the property, that was delivered -- 9 we -- we had a stop-work conference at another quarry 10 and Dana Dean, John Rogers, and I took part in that and 11 we delivered a copy to him at that time. 12 It was not an official service or anything 13 like that, we just happened to have a copy with us and 14 we gave him that letter. I -- I don't remember 15 specifically who gave him the letter, but, like I say, 16 it wasn't official service. 17 CHAIRMAN JOHNSON: Mr. Gill. 18 MR. GILL: Are you aware that if a underlying 19 mineral lease is -- mining lease is -- is terminated, 20 that you still have the authority to order someone to 21 enter that property for reclamation purposes prior to 22 forfeiture of the bond? 23 MR. BAKER: No. I -- I -- I was -- I am not 24 aware of that. 25 CHAIRMAN JOHNSON: Ms. Lewis, anything else?</p> <p style="text-align: right;">Page 79</p>	<p>1 on the record. 2 Mr. Haas, would you -- would you like to talk 3 about the rebuttal testimony that was offered by 4 Mr. Kunzler? And before I do that, if you'd like to, we 5 would like to swear you in -- 6 MR. HAAS: Okay. 7 CHAIRMAN JOHNSON: -- to make sure that 8 you're -- what you offer today is treated by the board 9 as testimony and weighed as testimony. Okay? So, 10 please, let's swear you in. 11 BRYCE HAAS, 12 called as a witness on behalf of the Division, being 13 duly sworn, was examined and testified as follows: 14 MR. HAAS: Yes. 15 CHAIRMAN JOHNSON: And you -- I think you 16 affirmed a little earlier that all the testimony that 17 you've offered today has been truthful as if you had 18 been under oath before. 19 MR. HAAS: Yes. Correct. 20 CHAIRMAN JOHNSON: So the board can weigh that 21 all as testimony? 22 MR. HAAS: Yes. 23 CHAIRMAN JOHNSON: So please -- please, go 24 ahead. 25 MR. HAAS: The reason the reclamation had come</p> <p style="text-align: right;">Page 81</p>

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<p>1 to an end on the B&C Limestone Quarry was because I have</p> <p>2 a 115 Kawasaki loader, okay? With the economic</p> <p>3 downturn, we were unable to find tires. I was on a</p> <p>4 waiting list for six months. There was a brief</p> <p>5 intermission there that we weren't able to quarry</p> <p>6 because we did not have tires for this machine. We</p> <p>7 looked high and low. I located some used tires and we</p> <p>8 went through this on the previous quarry because I wiped</p> <p>9 out two 10,000-dollar tires on the previous quarry</p> <p>10 reclamation. And that took away my reserve tires, okay?</p> <p>11 These guys were present, John Blake and Lynn</p> <p>12 Kunzler saw the tires, saw that they were no longer able</p> <p>13 to be ran. They were at the base of the quarry when we</p> <p>14 pulled off that and they said, "Hey, look, here we are,</p> <p>15 guys. You're good." Okay. I went over to the Fayette</p> <p>16 Quarry and lost the tires reclaiming the upper north</p> <p>17 half of that.</p> <p>18 So when he makes a statement that says little</p> <p>19 or none has been reclaimed, the whole upper end of that</p> <p>20 quarry's been reclaimed. There is a strip down through</p> <p>21 the middle and while I was under repairs, he came down</p> <p>22 and we -- we walked out. We didn't measure anything.</p> <p>23 We walked out and said, "Okay. This is how many feet by</p> <p>24 how many feet." We both came to an estimate of five</p> <p>25 acres down through the middle that needed to be</p> <p style="text-align: right;">Page 82</p>	<p>1 period -- when the 45 days came last, we were still</p> <p>2 waiting for tires to go back in and take care of that.</p> <p>3 And that's why my equipment was staged across the street</p> <p>4 on a personal piece of property I own. Because we had</p> <p>5 no place to go. We couldn't load it, we couldn't</p> <p>6 transport it, we couldn't do anything.</p> <p>7 So, you know, there was a substantial amount.</p> <p>8 When you move more than an acre of dirt, I'm saying</p> <p>9 that's pretty substantial. When you move the kind of</p> <p>10 overburden that's been moved up there on that hill, a</p> <p>11 pebble, would say that, you know, you're at least making</p> <p>12 an effort, because I'll be the first one to admit it's a</p> <p>13 hole in the ground. I'm not -- I'm not contesting that.</p> <p>14 But when they contest that there's still 16</p> <p>15 acres here that needs to be reclaimed, I think we need</p> <p>16 to go back to a previous conversation that when the</p> <p>17 seismograph work was done on that quarry and they</p> <p>18 brought their seismograph equipment across that quarry</p> <p>19 and did \$30,000 worth of damage to the reclamation and</p> <p>20 all the seed that -- you know, that was never taken into</p> <p>21 consideration either and now they're coming up with all</p> <p>22 this different stuff here that has grown the acreage</p> <p>23 from, basically, 6 acres to 16.</p> <p>24 And I'm not -- I'm not figuring how that is</p> <p>25 because that -- that area was regraded and passed off</p> <p style="text-align: right;">Page 84</p>
<p>1 regraded.</p> <p>2 We walked around the buildings that had been</p> <p>3 taken down, the concrete slab is still there, all that</p> <p>4 property was flat just the way it was when I moved in</p> <p>5 there. That's why I put the building there. So there's</p> <p>6 only a little bit of regrading that has to be done. The</p> <p>7 concrete has to be removed. Okay.</p> <p>8 There was an additional two acres there.</p> <p>9 There was an acre and a half around the -- around the</p> <p>10 cement pad that still had stone there stacked on it that</p> <p>11 was for sale. Okay. We took in another half an acre</p> <p>12 for the line that went up the hill, that you've seen in</p> <p>13 the videotape here of the water systems that fed those</p> <p>14 saws.</p> <p>15 So, you know, I'm -- I'm going to say that,</p> <p>16 you know, if you can't see there's been substantial</p> <p>17 reclamation done on the top end of that quarry, I'm</p> <p>18 going to suggest you go get you a pair of glasses.</p> <p>19 CHAIRMAN JOHNSON: By the top end, do you mean</p> <p>20 the north end?</p> <p>21 MR. HAAS: The north end.</p> <p>22 CHAIRMAN JOHNSON: Okay.</p> <p>23 MR. HAAS: Because that whole north end got</p> <p>24 reclaimed in this -- in this transition period that</p> <p>25 they're talking about and when the transmission</p> <p style="text-align: right;">Page 83</p>	<p>1 when they came in and mowed across it and you can see</p> <p>2 right where they are and right where they've been. And</p> <p>3 you can see that today.</p> <p>4 CHAIRMAN JOHNSON: Okay.</p> <p>5 MR. HAAS: I haven't been permitted to go on</p> <p>6 the property to take pictures of what's been done and</p> <p>7 what hasn't been done to submit anything in formal</p> <p>8 writing or pictures to this board. I haven't been</p> <p>9 permitted on the property. I can't come to you and say,</p> <p>10 "Hey, you know, here I am. Here's my pictures. This is</p> <p>11 what I've regraded. This is what I need to regrade.</p> <p>12 This is what I've removed. This is what I haven't</p> <p>13 removed," because I haven't been permitted to the</p> <p>14 property.</p> <p>15 CHAIRMAN JOHNSON: Do you have any -- any kind</p> <p>16 of evidence regarding this seismic work that you talked</p> <p>17 about, Mr. Haas? I know you said you haven't been able</p> <p>18 to take pictures of it. Do you have --</p> <p>19 MR. HAAS: Yes, I have -- I have pictures. I</p> <p>20 have pictures in my files. I need time to go through</p> <p>21 them. I'm currently, you know, living out of state and</p> <p>22 I -- you know, I can provide those to the board, yes.</p> <p>23 CHAIRMAN JOHNSON: Mr. Quigley.</p> <p>24 MR. QUIGLEY: Mr. Haas, is your equipment</p> <p>25 still available in this area?</p> <p style="text-align: right;">Page 85</p>

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<p>1 MR. HAAS: I -- I cannot -- well, yes, it is</p> <p>2 but I cannot reclamate this quarry. I want these guys</p> <p>3 to -- to get home today and we'll address some other</p> <p>4 issues that need to happen here. You know, if they're</p> <p>5 willing -- if they're willing to take the 36,000-dollar</p> <p>6 bond and call it a day, you're going to have no argument</p> <p>7 out of me but I think it's pretty clear, you know,</p> <p>8 what -- what's gone on here today.</p> <p>9 And, you know, I'm -- I'm -- I'm beside</p> <p>10 myself. I fall under the America's Disability Act and</p> <p>11 you guys have nothing but shove me around. And I don't</p> <p>12 mean you guys. I'm talking SITLA. They've shoved me</p> <p>13 around for ten years.</p> <p>14 MR. QUIGLEY: Okay. My next question is is</p> <p>15 the slabs that you have cut on the property, do they</p> <p>16 have any value?</p> <p>17 MR. HAAS: Yes, they do. And if I could</p> <p>18 access those -- access those slabs, I would have had a</p> <p>19 30,000-dollar sale on that material to finish the</p> <p>20 reclamation. But all of sudden I got a cog thrown in it</p> <p>21 and there I sat.</p> <p>22 MR. QUIGLEY: So you think the value of that</p> <p>23 cut stone there is in the neighborhood of \$30,000?</p> <p>24 MR. HAAS: Absolutely.</p> <p>25 MR. QUIGLEY: Thank you.</p> <p style="text-align: right;">Page 86</p>	<p>1 MR. HAAS: Yes.</p> <p>2 CHAIRMAN JOHNSON: Okay.</p> <p>3 MR. HAAS: I have never abandoned my</p> <p>4 equipment.</p> <p>5 CHAIRMAN JOHNSON: Mr. Payne.</p> <p>6 MR. PAYNE: Just one other question to</p> <p>7 clarify. So Mr. Blake's got a chronology and you do</p> <p>8 have a copy of Mr. Blake's chronology there. Do you</p> <p>9 have any recollection of any other contacts you had made</p> <p>10 requesting access to the property other than those</p> <p>11 listed that -- in order to do the reclamation work?</p> <p>12 MR. BAKER: Could you point out the ones so</p> <p>13 that we can --</p> <p>14 MR. PAYNE: So Mr. -- Mr. Blake's summary</p> <p>15 shows that the contact in May of 2010, but nothing</p> <p>16 between, I think it was, June -- just tell me if there's</p> <p>17 been any other requests to be on the property other than</p> <p>18 those listed, and -- since June 2009.</p> <p>19 MR. HAAS: No, I don't believe there was.</p> <p>20 MR. PAYNE: Just -- okay. The one request in</p> <p>21 May?</p> <p>22 MR. HAAS: I was told not to enter. Not only</p> <p>23 that, but when I was told not to enter, they went down</p> <p>24 there and put a lock on the gate. They put their lock</p> <p>25 on the gate. They painted yellow and orange all over</p> <p style="text-align: right;">Page 88</p>
<p>1 MR. PAYNE: Can I clarify?</p> <p>2 CHAIRMAN JOHNSON: Mr. Payne.</p> <p>3 MR. PAYNE: So, Mr. Haas, you -- you have</p> <p>4 no -- let me get it straight. You have no desire</p> <p>5 necessarily to go back on this property at this point</p> <p>6 and do the reclamation?</p> <p>7 MR. HAAS: I cannot. I've moved on in life.</p> <p>8 I'm here to try to, you know, get this thing handled and</p> <p>9 straightened around here today but I'm -- I'm working in</p> <p>10 Canada. I'm working in the oil sands in Canada and, you</p> <p>11 know, I'm currently stationed in North Dakota. But I'm</p> <p>12 back and forth across the border and I'm -- you know,</p> <p>13 the majority of my work is in North Dakota.</p> <p>14 MR. PAYNE: Well, let me just --</p> <p>15 CHAIRMAN JOHNSON: Can I just clarify?</p> <p>16 MR. PAYNE: Yeah. Clarify.</p> <p>17 CHAIRMAN JOHNSON: Mr. Haas, when Mr. Payne</p> <p>18 said, though, that you have no desire to go back on the</p> <p>19 property and you said you didn't, you're not including,</p> <p>20 though, the cut stone that's already there. You would</p> <p>21 still like that cut stone I'm assuming?</p> <p>22 MR. HAAS: I would like the cut stone and the</p> <p>23 remainder of my property that -- that lies on that.</p> <p>24 CHAIRMAN JOHNSON: I just wanted to make sure</p> <p>25 you weren't saying you --</p> <p style="text-align: right;">Page 87</p>	<p>1 the gate and hung a no trespassing sign there. And I</p> <p>2 don't know what kind of -- what kind of, you know,</p> <p>3 conviction trespassing has to do in this state but, you</p> <p>4 know, when it's -- when it's chained out and locked and</p> <p>5 there's -- there's a sign there that, obviously, says,</p> <p>6 "Do not enter."</p> <p>7 MR. PAYNE: Yeah. I don't expect you to go on</p> <p>8 the property. I'm just asking if you had any other</p> <p>9 attempts at trying to get access and I appreciate your</p> <p>10 answer.</p> <p>11 Thank you. I'm done, Mr. Chairman.</p> <p>12 CHAIRMAN JOHNSON: Okay. Mr. Harouny.</p> <p>13 MR. HAROUNY: Mr. Haas, during your</p> <p>14 conversations with either Mr. Blake or counselor, did</p> <p>15 you have a work schedule or did you submit a -- a plan</p> <p>16 to them either verbally or -- or a written plan of</p> <p>17 reclamation?</p> <p>18 MR. HAAS: Yes, I did.</p> <p>19 MR. HAROUNY: And did you keep up with that</p> <p>20 plan, all the stips within that plan and the timeline</p> <p>21 associated?</p> <p>22 MR. HAAS: No. I can't control forces out of</p> <p>23 my -- out of my hands. You know, everything that turns</p> <p>24 to right in this life wears out. And when you have</p> <p>25 equipment problems, you know, there's not much you can</p> <p style="text-align: right;">Page 89</p>

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<p>1 do. But I'm going to answer that question so you have a 2 clear, firm, that, no, I did not due to equipment 3 failures. 4 MR. HAROUNY: So the -- in your estimation, if 5 you didn't have equipment failures or any other things 6 that you cannot control, how long would it take you to 7 complete that plan? 8 MR. HAAS: Five weeks. That's the reclamation 9 of the well, you know, it's going to have to be filled 10 full of concrete. All of the concrete's going to have 11 to be hauled on and in dumps, you know, and to get to 12 where it's ready to be reseeded. You know, you're 13 looking at four to five weeks worth of work. 14 MR. HAROUNY: So you've been given two 15 extensions to the tune of one year each, a 30-day 16 extension, a 45-day extension to complete a five-week 17 work. 18 MR. HAAS: Well, we're talking -- we're 19 talking on what -- what the acreage is today. And 20 they're in discrepancy. The acreage was quite a bit 21 more than that when I -- when I went in and started 22 reclaiming. 23 MR. HAROUNY: Okay. 24 MR. HAAS: But the current -- the current 25 date, what I'm telling you, today's date, the way it</p> <p style="text-align: right;">Page 90</p>	<p>1 said that this -- this board right here was going to, 2 you know, straighten all that out. And now all of a 3 sudden we've grown -- grown the project from 5 acres to 4 16, I guess, it is if I recollect it right. 5 MR. HAROUNY: And your previous work in this 6 area, what was the average per-acre reclamation cost to 7 you? 8 MR. HAAS: Um -- 9 MR. HAROUNY: I realize you used some of your 10 own equipment, et cetera, et cetera. 11 MR. HAAS: I'm -- I'm going to say -- you 12 know, I'd -- I'd have to look because I don't know how 13 much diesel fuel is used versus how many breakdowns. 14 All those are computed into the number per acre. I'm -- 15 I'm going to guess, and this is merely a guess, I'm 16 going to guess about \$3,000 per acre. 17 That's -- that's my guess, my cost. You won't 18 get it done from somebody else for 3,000 an acre. 19 MR. HAROUNY: Okay. Thank you. 20 MR. HAAS: Even -- even though we're in a 21 starving economy and people want to do things for 22 pennies on the dollar. 23 MR. HAROUNY: Thank you. 24 CHAIRMAN JOHNSON: Mr. Jensen. 25 MR. JENSEN: Mr. Haas, you -- you made</p> <p style="text-align: right;">Page 92</p>
<p>1 sits today, it's four or five -- four or five weeks 2 worth of work, and you're probably looking, you know, 3 two and a half -- two-and-a-half to three weeks just in 4 dirt work. But to find somebody with trucks, they can 5 haul, find a disposal site for the concrete, get a third 6 party in there to fill the -- fill the well and get 7 it -- get the water division out to make sure it's done 8 to their specifications. I don't know what their 9 timeline is. 10 MR. HAROUNY: Do you realize that there may 11 very well be a substantial deficiency in the amount 12 that's needed to reclaim this site maybe? 13 MR. HAAS: Well, you know, that's an 14 interesting case you bring up because these guys have 15 had six months to put together a portfolio of what it 16 was actually going to take. And I've asked five times 17 to get it and here we stand here today and we still 18 don't have a hard number. 19 I mean, that's -- I mean, is the Division not 20 responsible, when the operator makes a request, to come 21 out, GPS the location, say, "This is how much we have. 22 This is what we have to do, this is the dollar amount 23 that you're either going to need to come up with or 24 you're going to have to reclaim inside this dollar 25 amount"? I've asked five times and all five times they</p> <p style="text-align: right;">Page 91</p>	<p>1 reference to your equipment. What is the equipment 2 that's left on site that is yours? 3 MR. HAAS: Well, there's some slab racks. 4 There's some processed stone there. There is a 5 10,000-gallon water tank. There's -- let me think here. 6 There's a 5,000-gallon waste tank. When we had an 7 office there we -- we ran all our wastewater, everything 8 into the tank. The guy come out from Valley Tank 9 Services and would pump that tank for, you know, toilet 10 accessories and, you know, hand washing and showers and 11 all that went into it -- went into a tank. 12 There's another 5,000-gallon tank there and 13 there's another three 1,000-gallon tanks that are hooked 14 to the 10,000-gallon tank on the hill. And then there's 15 a 1,000-gallon tank stuck over the well. We had to keep 16 it from freezing. 17 MR. JENSEN: Do those have -- do those have 18 value other than salvage value today? 19 MR. HAAS: You bet. In the oil field all day 20 long. Everybody wants a water tank. 21 MR. JENSEN: All right. And then, again, just 22 so it's clear, you -- you do not have any intention of 23 going back on the property or doing the reclamation? 24 MR. HAAS: Well, I -- I -- I never abandoned 25 what I have. You know, I would like to get my -- you</p> <p style="text-align: right;">Page 93</p>

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<p>1 know, the things that I own back. I mean, there's a 2 couple of slab racks there and these tanks. 3 MR. JENSEN: That wasn't my question. My 4 question was you -- you're not prepared to go -- go 5 reclaim the property. 6 MR. HAAS: I am not. Not at this time, no. 7 MR. JENSEN: Okay. Thank you. 8 CHAIRMAN JOHNSON: Mr. Quigley. 9 MR. QUIGLEY: Mr. Haas, I just want to -- I 10 just want to emphasize a point that Mr. Harouny made. 11 You're saying that you're not willing or ready to go 12 back and reclaim this property. And are you saying that 13 with the understanding that -- that the reclamation 14 costs could substantially exceed the \$36,000 that is a 15 available in a letter of credit -- well, not in a letter 16 of credit but now in an escrow account, and that you 17 might by -- by doing that you may undertake the 18 obligation for those excess costs? I don't know how 19 that will work but -- 20 MR. HAAS: Well, you know what, I've lost 21 everything in life right to this day so what do I have 22 to lose? 23 MR. QUIGLEY: Okay. All right. 24 MR. HAAS: I mean, you guys can sue me for the 25 deficiency, you know. I -- I don't see where there's a</p> <p style="text-align: right;">Page 94</p>	<p>1 you and -- and the Division as soon as we can but we're 2 not going to deliberate on it at this point in time. So 3 if you can still make your appointment, you're free to 4 leave. Okay? 5 MR. HAAS: And when will you make that 6 determination? 7 CHAIRMAN JOHNSON: Within ten days. Is 8 there -- 9 MR. JENSEN: However long you guys want. 10 CHAIRMAN JOHNSON: We will try to get you an 11 answer within ten days and I don't see any reason why we 12 can't do that. Is that satisfactory to both parties? 13 MS. LEWIS: Yes. 14 CHAIRMAN JOHNSON: Okay. All right. Then 15 let's take a ten-minute break and we will get set up for 16 the -- the next matter, which will be the second matter 17 on the agenda, I believe, the GENWAL. Okay? 18 So thank you. And we'll go off the record. 19 (PROCEEDINGS IN THE ABOVE-ENTITLED 20 MATTER WERE CONCLUDED.) 21 22 23 24 25</p> <p style="text-align: right;">Page 96</p>
<p>1 deficiency. You haven't -- you haven't given me my 2 right to enter the property to make an assessment for 3 myself or make a third-party assessment so I think right 4 there that, you know, I at least ought to have the 5 opportunity before any money gets disbursed anywhere, 6 and if -- if I can go in there and hire a contractor to 7 do it for \$36,000 or less, I would like to leave that in 8 reserve. But me, myself, I cannot go perform the -- 9 perform the work with my equipment. 10 MR. QUIGLEY: Okay. Thank you. 11 CHAIRMAN JOHNSON: Any other questions from 12 the board? 13 Okay. Does either party have anything else 14 they would like to address to the board regarding this 15 matter? 16 MS. LEWIS: No, not at this time. 17 CHAIRMAN JOHNSON: Mr. Haas? 18 MR. HAAS: (Shakes head.) 19 CHAIRMAN JOHNSON: Okay. Is there anyone else 20 present that would like to address the board regarding 21 this matter? 22 Okay. Mr. Haas, you said you were under a 23 time constraint and I hope we haven't caused you a 24 problem there but the board is going to take this matter 25 under advisement and make a decision on it and notify</p> <p style="text-align: right;">Page 95</p>	<p>1 REPORTER'S CERTIFICATE 2 STATE OF UTAH) 3 : SS. 4 COUNTY OF UTAH) 5 I, Jeff S. Eaton, do certify that I am a 6 Certified Court Reporter in and for the State of Utah. 7 That as such reporter, I reported the occasion 8 of the proceedings of the above-entitled matter at the 9 aforesaid time and place. 10 That the proceeding was reported by me in 11 stenotype using computer-aided transcription consisting 12 of pages 3 through 96 inclusive; 13 That the same constitutes a true and correct 14 transcription of the said proceedings; 15 That I am not of kin or otherwise associated 16 with any of the parties herein or their counsel, and 17 that I am not interested in the events thereof. 18 WITNESS my hand at Provo, Utah, this 3rd day 19 of February, 2011. 20 21 22 23 24 25</p> <p style="text-align: right;">Page 97</p>

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